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November 18, 1994

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Federal Register



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- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
  4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### WASHINGTON, DC

**WHEN:** December 15 at 9:00 a.m.  
**WHERE:** Office of the Federal Register Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)  
**RESERVATIONS:** 202-523-4538

### NEW YORK, NY

**WHEN:** December 13, 9:30 a.m.-12:30 p.m.  
**WHERE:** National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY  
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Free Electronic Bulletin Board service for Public Law numbers, Federal Register finding aids, and a list of documents on public inspection is available on 202-275-1538 or 275-0920.

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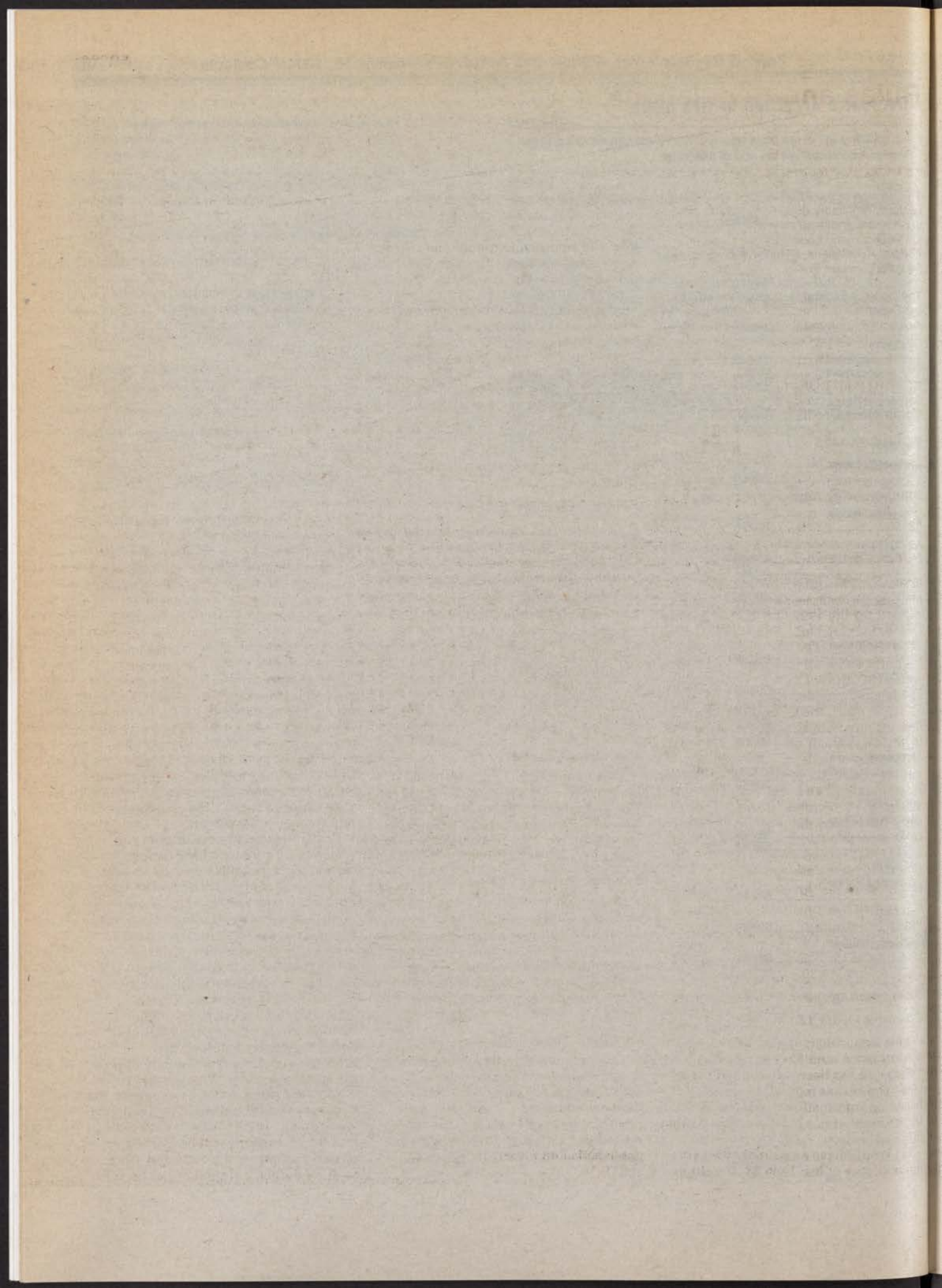
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1413

RIN 0560-AD55

#### Malting Barley Assessment

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

**SUMMARY:** This final rule sets the malting barley assessment rate at zero percent for the 1994 and 1995 crops of barley. Malting barley assessments have been levied by the Commodity Credit Corporation (CCC) in accordance with section 105B(p) of the Agricultural Act of 1949, as amended (the 1949 Act). On March 7, 1994, the CCC issued an interim rule with respect to the malting barley assessment rate for 1993 through 1995 crops of barley. The assessment rate was set at 2.5 percent. Lowering the assessment rate to zero percent for the 1994 and 1995 crops of barley is taken since it has been determined that the costs associated with levying the assessment exceed the revenue generated by the assessment.

**EFFECTIVE DATE:** November 18, 1994.

#### FOR FURTHER INFORMATION CONTACT:

Philip Sronce, Agricultural Economist, Grains Analysis Division, FSA, USDA, P.O. Box 2415, Washington, DC 20013-2415; telephone 202-720-4418.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined not to be a "significant regulatory action." Based on information compiled by the Department, it has been determined that this final rule:

(1) Would have an annual effect on the economy of less than \$100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

#### Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies is Feed Grain Production Stabilization—10.055.

#### Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not require the exhaustion of any administrative appeal remedies.

#### Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

#### Paperwork Reduction Act

The amendments to 7 CFR part 1413 set forth in this final rule will reduce the reporting burden for producers of 1994 through 1995 crops of barley by eliminating the requirement to complete form ASCS-658, Report of Production, for the purposes of providing marketing evidence of barley marketed as malting barley. The estimated reduction in burden hours on the public will be 18,750 hours annually. Form ASCS-658 is currently cleared under OMB No. 0560-0050 through August 31, 1996. ASCS will submit a request to revise the burden associated with the use of form ASCS-658 to the Office of Management and Budget by December 1, 1994.

#### Background

In accordance with section 105B(p) of the 1949 Act, the Secretary of Agriculture is required to levy an assessment with respect to producers of malting barley who are participating in the barley production adjustment program for each of the 1991 through 1995 crop years. The Secretary is required to establish such assessment at no more than 5 percent of the value of malting barley produced on program payment acres on the farm and the production per acre on which the assessment is based shall not be greater than the farm program payment yield.

On March 7, 1994, the CCC issued an interim rule with respect to the malting barley assessment rate for 1993 through 1995 crops of barley. The assessment rate was set at 2.5 percent.

Public response to the interim rule which reduced the malting barley assessment rate from 5 percent to 2.5 percent was supportive of the reduction, but encouraged CCC to adopt a zero-percent assessment rate in the final rule. Nine responses were received from representatives of industry and producers. Rep. Michael D. Crapo, U.S. House of Representatives, representing the Second District of Idaho, also encouraged the elimination of the malting barley assessment. Malting barley producers and industry representatives overwhelmingly oppose the assessment of malting barley.

After considering these comments, the Secretary has determined in accordance with section 105B(p) of the 1949 Act that the assessment will be established at zero-percent for the 1994 and 1995 crops of barley. This action has been

taken since CCC has determined that levying the assessment increases CCC outlays for barley deficiency payments greater than the revenue generated by the assessment. This increase in deficiency payments is generally due to changes in marketing patterns which have occurred as producers of barley market barley as feed barley which would otherwise have been marketed as malting barley in order to avoid the assessment. This causes the barley to be marketed at a lower price thus affecting the prices used by CCC in determining barley deficiency payments.

#### List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

Accordingly, 7 CFR part 1413 is amended as follows:

1. The authority citation for 7 CFR part 1413 continues to read as follows:

**Authority:** 7 U.S.C. 1308, 1308a, 1309, 1441-2, 1444-2, 1444f, 1445b-3a, 1461-1469, 15 U.S.C. 714b and 714c.

#### § 1413.110 [Amended]

2. A. In § 1413.110, paragraph (a) is amended by deleting "1995" and inserting "1993" in its place.

B. In § 1413.110, paragraph (b) is revised to read as follows:

#### § 1413.110 Malting barley.

(b)(1) The assessment rate per bushel will be the smaller of:

(i)(A) For the 1991 and 1992 crops of barley, 5 percent of the State weighted average market price of malting barley produced on the farm in those States where average market prices for the respective crop year are available from the National Agricultural Statistics Service,

(B) For the 1993 crop of barley, 2.5 percent of the State weighted average market price of malting barley produced on the farm in those States where average market prices for the respective crop year are available from the National Agricultural Statistics Service, or

(ii) The deficiency payment rate for such crop of barley.

(2) With respect to those States where the information from the National Agricultural Statistics Service is not available for purposes of administering subsection (b)(1), the national average market price for the respective crop year will be used.

(3) For the 1994 and 1995 crops of barley, no assessment will be levied.

Signed at Washington, DC on November 9, 1994.

**Richard Rominger,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 94-28541 Filed 11-17-94; 8:45 am]

BILLING CODE 3410-05-P

#### Animal and Plant Health Inspection Service

#### 9 CFR Parts 145 and 147

[Docket No. 92-151-3]

#### National Poultry Improvement Plan and Auxiliary Provisions

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** We are correcting the amendatory language that appeared in a final rule published in the *Federal Register* on March 18, 1994 (59 FR 12795-12805, Docket No. 93-137-1), and effective April 18, 1994. In the final rule, an amendatory instruction directed the revision of one sentence in the introductory text of a paragraph, when our intention was to revise that sentence and add a new sentence immediately following the revised sentence. The text of both the revised sentence and the new sentence were, however, set out in the final rule.

**EFFECTIVE DATE:** April 18, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mr. Andrew R. Rhorer, Senior Coordinator, Poultry Improvement Staff, National Poultry Improvement Plan, Veterinary Services, APHIS, USDA, room 205, Presidential Building, 6525 Belcrest Road, Hyattsville, MD 20782, (301) 436-7768.

#### PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for part 147 continues to read as follows:

**Authority:** 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

2. In FR Doc. 94-6187, page 12805, first column, amendatory instruction number 29b is corrected as follows:

#### § 147.14 [Corrected]

29. Section 147.14 is amended as follows:

\* \* \* \* \*

b. In the introductory text of paragraph (a)(2), the second sentence is revised, a new third sentence is added, and paragraphs (a)(2)(i) and (a)(2)(ii) are added to read as set forth below.

\* \* \* \* \*

Done in Washington, DC, this 14th day of November 1994.

**Lonnie J. King,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 94-28538 Filed 11-17-94; 8:45 am]

BILLING CODE 3410-34-P

#### DEPARTMENT OF TREASURY

#### Office of the Comptroller of the Currency

#### 12 CFR Part 8

[Docket No. 94-19]

RIN 1557-AB41

#### Assessment of Fees; National Banks; District of Columbia Banks

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is amending its regulation governing assessments and fees by removing the specific calculation of fees for examinations of fiduciary activities, special examinations and investigations, examinations of affiliates and examinations and investigations of corporate activities (hereinafter, trust and other examinations and investigations). This interim rule is intended to give the OCC the ability to reduce rates for trust and other examinations and investigations from the level set forth in the current regulation. The OCC will continue to include trust and other examination and investigation fees in the standard annual publication of fees.

**DATES:** This interim rule is effective on November 18, 1994; Comments must be received by January 17, 1995.

**ADDRESSES:** Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219, Attention: Docket No. 94-19. Comments will be available for inspection and photocopying at the same location.

**FOR FURTHER INFORMATION CONTACT:** Roy Madsen, Assistant Chief Financial Officer, Financial Review, Policy and Analysis, (202) 874-5130; or Patricia S. Grady, Senior Attorney, Legislative, Regulatory and International Activities, (202) 874-5090, Office of the Comptroller of the Currency, Washington, DC 20219.

## SUPPLEMENTARY INFORMATION:

## Background

Under the National Bank Act, 12 U.S.C. 1 *et seq.*, the OCC is responsible for supervising national banks and ensuring their compliance with applicable law. Pursuant to 12 U.S.C. 482, the Comptroller of the Currency may impose and collect assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the office of the Comptroller. The OCC's supervisory responsibilities include trust and other examinations and investigations, for which the OCC assesses a fee.

Dating from 1956, 12 U.S.C. 482 required the OCC to assess all national banks exercising fiduciary powers and all banks or trust companies in the District of Columbia exercising fiduciary powers a fee adequate to cover the expense of such examinations. The OCC revised 12 CFR 8.6 in 1984 to ensure that the fees were adjusted regularly to cover the expenses of conducting examinations of fiduciary activities. Prior to 1984, the OCC charged a fixed fee, that over time did not adequately cover the expenses of fiduciary examinations.

The current version of § 8.6 contains a specific calculation for trust and other examinations and investigations. This calculation is used to recover the total costs of conducting trust and other examinations and investigations. The calculation includes the number of hours OCC employees spend on an examination or investigation multiplied by an hourly fee. The components of the hourly fee are direct costs, billable hours, and an indirect cost rate. The direct costs include projected salary, benefits, and travel expenses. The indirect cost rate is a ratio of total indirect costs to total direct costs for the entire OCC.

The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102-242) changed 12 U.S.C. 482 by, among other things, removing the specific requirement for a fee adequate to recover expenses of examinations of fiduciary activities. FDICIA authorizes OCC to impose and collect assessments, fees, and other charges as necessary or appropriate to carry out its responsibilities. FDICIA gave OCC increased flexibility to set such assessments, fees, and other charges to meet its expenses for carrying out authorized activities. Since FDICIA became effective, the specific calculation in § 8.6 is no longer necessary.

As FDICIA recognized, the manner in which national banks conduct fiduciary

activities and the relationship of those activities to other bank operations has changed substantially in recent years, warranting more flexibility in the OCC's authority to charge for supervising those activities. The OCC's current fee structure for fiduciary activities reflects a view of those activities as special and separate from other bank operations. That is no longer the case today, as many banks' fiduciary activities are integral parts of a range of financial products and services provided bank customers. Accordingly, the OCC has concluded that it should revise its regulation for trust and other examinations and investigations to better utilize the flexibility provided by FDICIA and to reduce the fees currently charged for trust and other examinations and investigations.

## Changes Made by the Interim Rule

This interim rule removes the specific calculation in § 8.6 to provide the OCC with the flexibility to charge for trust and other examinations and investigations using methods other than those currently found in § 8.6, and to reduce fees. This interim rule refers the reader to the OCC Banking Issuance, "Notice of the Comptroller of the Currency Fees", in which virtually all other OCC fees are published. Eliminating the specific formula in the regulation for calculating fees for trust and other examinations and investigations, as well as the requirement that fees be set to recover total costs, allows the OCC more flexibility to determine fees for trust and other examinations and investigations and conform the treatment of those fees with other fees published in the OCC Banking Issuance, "Notice of the Comptroller of the Currency Fees." The OCC intends to use this flexibility to reduce fees for 1995.

## Use of an Interim Rule

The OCC has determined that there is good cause for adopting this interim rule immediately upon publication in the *Federal Register* without prior notice and comment. The interim rule confers a benefit on national banks by eliminating the inflexibility in the OCC's current fee calculation for trust and other examinations and investigations and enabling the OCC to reduce these fees for 1995. Therefore, because the interim rule provides a mechanism for the OCC to reduce fees, adoption with notice and comment 30 days after publication is unnecessary and contrary to the public interest. The OCC will continue to inform banks of those fees by publishing a schedule of fees related to trust and other

examinations and investigations in the OCC Banking Issuance, "Notice of Comptroller of the Currency Fees." The Notice will be published December 1, 1994, and will be effective January 1, 1995. The immediate effective date of this interim rule ensures that fee reductions in this area for 1995 will be implemented beginning January 1, 1995.

Additionally, this interim rule involves agency practice and procedure. The determination as to how fees will be assessed is internal to the OCC, since the Comptroller is required to recover expenses, but is not required to follow specific calculations or formulas when determining fees. As a result, the fee structure may be revised as necessary to meet OCC expenses. Although the OCC is not required to provide notice and public comment nor is it required to provide a 30-day delayed effective date under the Administrative Procedure Act, 5 U.S.C. 553(b)(A) and (d)(3), the OCC invites comment on any aspect of this interim rule, and on particular approaches the OCC should consider for its fiduciary activities examination fee structure. If the OCC proposes to implement a new approach to trust fees different from the reduction in rates it now contemplates, such as a separate trust assessment for those banks with fiduciary activities; or if the OCC proposes to increase fees for trust and other examinations and investigations, the OCC will seek appropriate public comment on the change at that time.

## Executive Order 12866

The OCC has determined that this document is not a significant regulatory action.

## Regulatory Flexibility Analysis

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This interim rule has no substantial impact on banks regardless of size. The OCC anticipates that the changes made by this interim rule will have no appreciable impact on the financial stability of banks.

## List of Subjects in 12 CFR Part 8

Assessments, Fees, National banks.

## Authority and Issuance

For the reasons set forth in the preamble, part 8 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

**PART 8—ASSESSMENT OF FEES;  
NATIONAL BANKS; DISTRICT OF  
COLUMBIA BANKS**

1. The authority citation for part 8 continues to read as follows:

**Authority:** 12 U.S.C. 93a, 481, 482 and 3102; 15 U.S.C. 78c and 1; and 26 D.C. Code 102.

2. Section 8.6 is revised to read as follows:

**§ 8.6 Fees for fiduciary activities examinations, special examinations and investigations fees, examination of affiliates, examinations related to corporate activities.**

(a) *Fees.* Pursuant to the authority contained in 12 U.S.C. 481 and 482, the Office of the Comptroller of the Currency assesses a fee for examining fiduciary activities of national and District of Columbia banks and related entities, for conducting special examinations and investigations of national and District of Columbia banks, for conducting examinations of affiliates of national and District of Columbia banks, and for conducting examinations and investigations made pursuant to 12 CFR Part 5, Rules, Policies, and Procedures for Corporate Activities.

(b) *Notice of Comptroller of the Currency Fees.* The OCC publishes the fee schedule for fiduciary activities, special examinations and investigations, examinations of affiliates and examinations related to corporate activities in the Notice of Comptroller of the Currency Fees described in § 8.8.

Dated: November 2, 1994.

Eugene A. Ludwig,  
Comptroller of the Currency.

[FR Doc. 94-28400 Filed 11-17-94; 8:45 am]

BILLING CODE 4810-33-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 94-AGL-25]

**Modification of Class D Airspace; NAS  
Glenview, IL, and Establishment of  
Class D and Class E Airspace;  
Wheeling, IL**

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects the modified NAS Glenview, IL, Class D airspace designation published in a final rule on October 13, 1994 [59 FR 51850]. Airspace Docket No. 94-AGL-25. The modified legal description inadvertently

did not include the exclusion of the Wheeling, IL, Class D airspace area.

**EFFECTIVE DATE:** 0901 u.t.c., December 8, 1994.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7568.

**SUPPLEMENTARY INFORMATION:****History**

Federal Register Document 94-25320, Airspace Docket No. 94-AGL-25 published on October 13, 1994 [59 FR 51850], modified the Class D airspace at NAS Glenview, IL. The modified airspace designation, however, inadvertently did not include the exclusion of the Wheeling, IL, Class D airspace area. This action corrects the error by adding the exclusionary language to the airspace designation.

**Correction of Final Rule**

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 94-AGL-25, as published in the Federal Register on October 13, 1994 [59 FR 51850], (Federal Register Document 94-25320, page 51851, column 1) is corrected in the amendment to the incorporation by reference in 14 CFR part 71 as follows:

**§ 71.1 [Corrected]**

Paragraph 5000 General  
\* \* \* \* \*

**AGL IL D NAS Glenview, IL [Revised]**

NAS Glenview, IL  
(Lat. 42°05'00" N., long. 87°49'06" W.)  
Northbrook VORTAC

(Lat. 42°13'26" N., long. 87°57'06" W.)  
Glenview TACAN

(Lat. 42°05'08" N., long. 87°49'21" W.)

That airspace extending upward from the surface to but not including 3,000 feet MSL within a 4.1-mile radius of NAS Glenview and within 1.8 miles each side of the Northbrook VORTAC 145° radial extending from the Glenview NAS 4.1-mile radius to 5.5 miles northwest of the NAS, and within 1.7 miles each side of the Glenview TACAN 100° radial extending from the 4.1-mile radius to 5.7 miles east of the NAS and within 2.0 miles west and 1.4 miles east of the Glenview TACAN 002° radial extending from the 4.1-mile radius to 6.1 miles north of the NAS, excluding that airspace within the Chicago, IL, Class B airspace, and Wheeling, IL, Class D airspace area when it is in effect. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

Issued in Des Plaines, Illinois on November 3, 1994.

Roger Wall,  
Manager, Air Traffic Division.

[FR Doc. 94-28532 Filed 11-17-94; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

[Airspace Docket No. 94-AWP-3]

**Amendment to Class D Airspace;  
Oxnard, CA, Camarillo, CA and Naval  
Air Weapons Station (NAWS) Point  
Mugu, CA**

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends Class D airspace at Oxnard, CA, Camarillo, CA and Naval Air Weapons Station (NAWS) Point Mugu, CA. This action improves inter-facility coordination and enhances flight safety for military aircraft entering the overhead pattern at NAWS Point Mugu. The area will be depicted on aeronautical charts to provide a reference for pilots operating in the area.

**EFFECTIVE DATE:** 0901 UTC, February 2, 1995.

**FOR FURTHER INFORMATION CONTACT:** Scott Speer, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261; telephone (310) 297-0010.

**SUPPLEMENTARY INFORMATION:****History**

On March 14, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Oxnard, CA, Camarillo, CA and NAWS Point Mugu, CA (59 FR 14804). The Class D airspace is being modified to simplify procedures for pilots and controllers. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received regarding the proposal. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document will be published subsequently in this Order.

## The Rule

This amendment to part 71 of the Federal Aviation Regulation modifies Class D airspace at Oxnard, California, Camarillo, California, and NAWS Point Mugu, California. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

#### Paragraph 5000 Class D Airspace

#### AWP CA D Oxnard, CA [Revised]

Oxnard, CA  
(lat. 34°12'03" N., long. 119°12'26" W.)

That airspace extending upward from the surface to and including 2,000 feet MSL within a 4.3-mile radius of the Oxnard Airport, excluding that portion east and southeast of lat. 34°15'39" N., long. 119°09'35" W.; direct lat. 34°10'22" N., long. 119°09'27" W.; direct lat. 34°07'45" N., long. 119°12'24" W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will

thereafter be continuously published in the Airport/Facility Directory.

#### AWP CA D Camarillo, CA [Revised]

Camarillo, CA  
(lat. 34°12'50" N., long. 119°05'40" W.)

That airspace extending upward from the surface to and including 2,000 feet MSL within a 4.3 radius of the Camarillo Airport, excluding that portion south and west of lat. 34°09'17" N., long. 119°02'42" W.; direct lat. 34°10'35" N., long. 119°03'54" W.; direct lat. 34°10'22" N., long. 119°09'27" W.; direct lat. 34°15'39" N., long. 119°09'35" W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

#### AWP CA D NAWS Point Mugu, CA [Revised]

NAWS Point Mugu, CA  
(lat. 34°07'13" N., long. 119°07'15" W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.3 radius of NAWS Point Mugu, excluding that portion north and west of lat. 34°09'17" N., long. 119°02'42" W.; direct lat. 34°10'35" N., long. 119°03'54" W.; direct lat. 34°10'22" N., long. 119°09'27" W.; direct lat. 34°07'45" N., long. 119°12'24" W. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Los Angeles, California, on November 3, 1994.

Dennis T. Koehler,

Acting Manager, Air Traffic Division,  
Western-Pacific Region.

[FR Doc. 94-28529 Filed 11-17-94; 8:45 am]

BILLING CODE 4910-13-M

### 14 CFR Part 97

[Docket No. 1632; Amdt. No. 27957]

### Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient

use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further,

airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (air).

Issued in Washington, DC on November 4, 1994.

Thomas C. Accardi,  
Director, Flight Standards Service.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

### PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

\* \* \* Effective February 2, 1995

Troy, AL, Troy Muni, VOR RWY 7, Amdt 3, Cancelled  
Decatur, IL, Decatur, VOR RWY 18, Orig  
Wabash, IN, Wabash Muni, VOR or GPS-A, Amdt 10  
Wabash, IN, Wabash Muni, NDB or GPS RWY 27, Amdt 12  
Lawton, OK, Lawton Muni, VOR RWY 35, Amdt 19  
Lawton, OK, Lawton Muni, ILS RWY 35, Amdt 6  
Lawton, OK, Lawton Muni, RADAR-1, Amdt 3  
Lawton, OK, Lawton Muni, RADAR-2, Amdt 1  
Mooreland, OK, Mooreland Muni, NDB OR GPS RWY 17, Amdt 3  
Tillamook, OR, Tillamook, NDB-A, Amdt 1A, Cancelled  
Terrell, TX, Terrell Muni, NDB RWY 17, Amdt 2  
Amery, WI, Amery Muni, NDB or GPS RWY 18, Amdt 5  
New Richmond, WI, New Richmond Muni, NDB RWY 14, Amdt 1

\* \* \* Effective January 5, 1994

Abbeville, LA, Abbeville Municipal, VOR/DME-B, Amdt 2  
Port Sulphur, LA, Port Sulphur, VOR/DME-B, Amdt 6  
Monett, MO, Monett Muni, VOR/DME-A, Orig, Cancelled  
Monett, MO, Monett Muni, VOR/DME RNAV RWY 18, Orig  
Bristow, OK, Jones Meml, NDB RWY 35, Amdt 1  
Mc Allen, TX, Mc Allen Miller Intl, VOR-A, Amdt 13, Cancelled  
Mc Allen, TX, Mc Allen Miller Intl, VOR RWY 31, Orig  
Mc Allen, TX, Mc Allen Miller Intl, LOC BC RWY 31, Amdt 8  
Rockport, TX, Aransas Co, VOR/DME OR TACAN OR GPS-A, Amdt 8  
Rockport, TX, Aransas Co, NDB 1 RWY 14, Amdt 7  
Rockport, TX, Aransas Co, NDB 2 RWY 14, Amdt 3

\* \* \* Effective December 8, 1994

Colorado Springs, CO, City of Colorado Springs Muni, ILS/DME RWY 17L, Orig  
Colorado Springs, CO, City of Colorado Springs Muni, ILS RWY 17R, Amdt 5, Cancelled  
Colorado Springs, CO, City of Colorado Springs Muni, ILS RWY 17R, Amdt 4A, Cancelled  
Steamboat Springs, CO, Steamboat Springs/Bob Adams Field, VOR/DME-C, Orig  
Orlando, FL, Orlando Intl, VOR/DME RNAV RWY 36L, Orig  
Yap Island, FM, Yap International, NDB RWY 7, Amdt 5, Cancelled  
Yap Island, FM, Yap International, NDB RWY 7, Orig  
Yap Island, FM, Yap International, NDB/DME RWY 7, Amdt 1, Cancelled  
Yap Island, FM, Yap International, NDB/DME RWY 7, Orig  
Michigan City, IN, Michigan City, VOR or GPS-A, Amdt 4  
Decorah, IA, Decorah Muni, VOR RWY 29, Amdt 3  
Wellington, KS, Wellington Muni, VOR/DME RWY 17, Amdt 1 Cancelled  
Baltimore, MD, Baltimore-Washington Intl, LOC RWY 10, Orig, Cancelled  
Baltimore, MD, Baltimore-Washington Intl, ILS RWY 10, Amdt 15  
Kansas City, MO, Kansas City Intl, NDB RWY 1L, Amdt 15  
Kansas City, MO, Kansas City Intl, ILS RWY 1L, Amdt 12  
Whitefield, NH, Mount Washington Regional, LOC RWY 10, Amdt 4  
Whitefield, NH, Mount Washington Regional, NDB RWY 10, Amdt 7  
Block Island, RI, Block Island State, VOR/DME or GPS RWY 10, Amdt 4  
Block Island, RI, Block Island State, VOR or GPS RWY 28, Amdt 4  
Block Island, RI, Block Island State, NDB RWY 10, Amdt 4  
Westerly, RI, Westerly State, NDB RWY 7, Amdt 3  
Westerly, RI, Westerly State, LOC RWY 7, Amdt 5  
Osceola, WI, L. O. Simenstad Muni, NDB RWY 28, Amdt 9

**\* \* \* Effective Upon Publication**

Washington, DC, Washington National,  
RADAR 1, Amdt 25, Cancelled  
Wolf Point, MT, L. M. Clayton, NDB RWY 29,  
Amdt 2

Concord, NC, Concord Regional, VOR/DME  
RWY 20, Amdt 1

Nacogdoches, TX, A. L. Mangham Jr.  
Regional, ILS RWY 36, Amdt 2

[FR Doc. 94-28531 Filed 11-17-94; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 97**

[Docket No. 27958; Amdt. No. 1633]

**Standard Instrument Approach Procedures; Miscellaneous Amendments**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

**For Examination**

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

**For Purchase**

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**By Subscription**

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some

previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR part 97**

Air Traffic Control, Airports, Navigation (air).

Issued in Washington, DC on November 4, 1994.

Thomas C. Accardi,  
Director, Flight Standards Service.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing,

amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

#### PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME

or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

#### EFFECTIVE UPON PUBLICATION

FDC Date	State	City	Airport	FDC No.	SIAP
10/20/94	TX	Corpus Christi .....	Corpus Christi Intl .....	4/6055	LOC RWY 31 AMDT 5...
10/20/94	TX	Corpus Christi .....	Corpus Christi Intl .....	4/6056	VOR OR TACAN OR GPS RWY 17 AMDT 26...
10/20/94	TX	Laredo .....	Laredo Intl .....	4/6057	NDB OR GPS RWY 17R AMDT 9...
10/20/94	TX	Laredo .....	Laredo Intl .....	4/6058	NDB OR GPS RWY 17L AMDT 2...
10/20/94	TX	Laredo .....	Laredo Intl .....	4/6059	VOR OR TACAN OR GPS RWY 32 AMDT 9...
10/20/94	TX	Laredo .....	Laredo Intl .....	4/6060	ILS RWY 17R AMDT 8...
10/24/94	TX	Dallas .....	Redbird .....	4/6147	ILS RWY 31 AMDT 6...
10/28/94	MA	Hyannis .....	Barnstable Muni-Boardman/ Polando Field.	4/6204	VOR OR GPS RWY 6 AMDT 7...
10/28/94	MA	Hyannis .....	Barnstable Muni-Boardman/ Polando Field.	4/6205	ILS RWY 24 AMDT 16B...
10/28/94	MA	Hyannis .....	Barnstable Muni-Boardman/ Polando Field.	4/6206	ILS RWY 15 AMDT 2...
10/28/94	MA	Hyannis .....	Barnstable Muni-Boardman/ Polando Field.	4/6207	NDB OR GPS RWY 24 AMDT 9A...

[FR Doc. 94-28313 Filed 11-17-94; 8:45 am]  
BILLING CODE 4910-13-M

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

##### Office of the Secretary

##### 24 CFR Part 17

[Docket No. R-94-1758; FR-3777-F-01]

#### HUD Board of Contract Appeals Administrative Claims Technical Amendment

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

**SUMMARY:** HUD is amending its regulations governing debtor correspondence with the HUD Board of Contract Appeals. Since these regulations were originally enacted, the Board has revised some of its procedural requirements and its mailing address has changed. This technical amendment will update the regulations.

**EFFECTIVE DATE:** December 19, 1994.

**FOR FURTHER INFORMATION CONTACT:** David T. Anderson, Chairman, Board of Contract Appeals, Room 2131, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone

(202) 927-5110. Hearing or speech-impaired individuals may call (202) 708-9300 (TDD) or 1-800-877-8339 (Federal Information Relay Service TDD). (Other than the "800" number, these telephone numbers are not toll free).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The HUD regulations located at 24 CFR part 17, subpart C, implement the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, 3716-18, and 5 U.S.C. 5514) (the "Act"). The Act requires that the Secretary or the Secretary's designee attempt the collection of all claims of the United States for money or property arising from HUD activities. The Act also authorizes the Secretary or the Secretary's designee to compromise, suspend or terminate action on certain claims listed in 24 CFR 17.60(a).

The regulation at 24 CFR 17.152(a) states that a person who has received a Notice of Intent to collect a claim from HUD has the right to present evidence that all or part of the debt is not past-due or that the debt is not legally enforceable. An Administrative Judge from the HUD Board of Contract Appeals reviews the evidence submitted

by HUD and the debtor in order to make a determination on the debt (24 CFR 17.152(c)).

The regulations in 24 CFR 17.161 set forth requirements for correspondence from the debtor seeking review to the HUD Board of Contract Appeals. Paragraph (a) of § 17.161 specifies where the correspondence must be addressed. This paragraph also requires that the debtor send a copy of the correspondence to the Offsets Docket Clerk.

Since 24 CFR 17.161(a) was originally published, changes have occurred which have caused the regulation to become outdated. Specifically, the Board has implemented revised procedures which eliminate the requirement for duplicate filing by the debtor. Also, the Board's room number for mailing purposes has changed and is incorrect as published. Furthermore, since this paragraph relates to the exercise of the debtor's rights before the Board, the provision directing correspondence to the Secretary, and not the Board, is erroneous. Accordingly, 24 CFR 17.161(a) is being updated to incorporate these changes.

##### II. Justification for Final Rule Making

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own

regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that it is unnecessary to solicit prior public comment before publishing this rule for effect, because HUD is merely updating 24 CFR part 17 to incorporate changes in procedure and address that have occurred since the regulations were originally enacted.

### III. Other Matters

#### A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

#### B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule merely updates an existing regulation to incorporate revisions in procedure that have occurred since the regulation took effect. It effects no changes in the current relationships between the federal government, the states and their political subdivisions in connection with this program.

#### C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. This rule amends an existing regulation to include procedural and address changes that have taken place since the regulation was enacted. No significant change in existing HUD policies or programs will result from the promulgation of this rule, as those policies and programs relate to family concerns.

#### D. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant impact on a substantial number of small entities. This rule merely updates an existing regulation to include procedural revisions that have been implemented since the regulation was first enacted. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities.

#### E. Regulatory Agenda

This final rule was not listed in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

#### List of Subjects in 24 CFR Part 17

Administrative Practice and procedure, Claims, Government employees, Income taxes, Wages.

Accordingly, 24 CFR part 17 is amended as follows:

#### PART 17—ADMINISTRATIVE CLAIMS

1. The authority citation for 24 CFR part 17 is revised to read as follows:

**Authority:** 28 U.S.C. 2672; 31 U.S.C. 3711, 3716-18, 3721, and 5 U.S.C. 5514; 42 U.S.C. 3535(d).

#### Subpart C—Procedures for the Collection of Claims by the Government

2. The authority citation for 24 CFR part 17, Subpart C is revised to read as follows:

**Authority:** 31 U.S.C. 3711, 3716-18, and 5 U.S.C. 5514; 42 U.S.C. 3535(d).

3. Section 17.161 is amended by revising paragraph (a) to read as follows:

#### § 17.161 Correspondence with the Department.

(a) All correspondence from the debtor to the Board concerning the right to review as described in § 17.152 shall be addressed to the HUD Board of Contract Appeals, Room 2131, 451 Seventh Street SW., Washington, DC 20410-0500.

\* \* \* \* \*

Dated: October 26, 1994.

Henry G. Cisneros,  
Secretary.

[FR Doc. 94-28510 Filed 11-17-94; 8:45 am]

BILLING CODE 4210-32-P

#### Office of the Assistant Secretary for Housing—Federal Housing Commissioner

#### 24 CFR Part 203

[Docket No. R-94-1761; FR-3775-F-01]

#### Mortgagor Income Stability Requirement for Single Family Mortgage Insurance

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule.

**SUMMARY:** HUD is repealing the mortgagor income stability requirement for single family mortgage insurance. The current regulation requires that a mortgagor's (borrower's) income continue for the first five years of the mortgage term in order for the mortgagee (lender) to include it in the mortgagor's qualifying ratios. HUD feels this five-year test for all income sources is too strict. By abolishing the regulation, the Federal Housing Commissioner will be free to establish income stability criteria as he believes appropriate for a particular income source and the mortgage product being offered.

**EFFECTIVE DATE:** December 19, 1994.

**FOR FURTHER INFORMATION CONTACT:** Morris E. Carter, Director, Single Family Development Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410; telephone (202) 708-2700; Hearing or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These telephone numbers are not toll free.)

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Under the single family home mortgage insurance program, the Federal Housing Administration (FHA) provides insurance for private lenders against loss on mortgages financing one-to-four-family dwellings. This program is governed by the HUD regulations at 24 CFR part 203.

The regulations at 24 CFR 203.33 set forth requirements concerning the relationship between the mortgagor's income and the mortgage payments. Specifically, 24 CFR 203.33(a) requires that the mortgagor establish that his or her gross income is, and will be, adequate to meet the periodic payments required by the mortgage, as well as any other long term obligations. Paragraph (b) of this section requires that only stable income expected to continue for approximately the first five years of the

mortgage term be included in § 203.33(a)'s income adequacy calculation.

HUD is repealing 24 CFR 203.33(b). Experience has shown that the current five year projection of income is neither reasonable nor is it required by the Veteran's Administration, the government-sponsored enterprises of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, or the private mortgage insurers. These entities have established different criteria for income stability determination depending on the income source and other variables. HUD feels the FHA Commissioner should be permitted the same latitude.

By abolishing 24 CFR 203.33(b), the Commissioner will be free to establish income stability criteria as he sees appropriate for a particular income source and the mortgage product being offered. This will also enhance the Commissioner's ability to respond to a changing mortgage market.

## II. Justification for Final Rule Making

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. However, part 10 provides that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). HUD finds that it is unnecessary to solicit prior public comment before publishing this rule for effect, because this rule is merely eliminating a burdensome requirement which denies borrowers homeownership opportunities. HUD will still maintain reasonable and adequate underwriting standards.

## III. Other Matters

### A. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

### B. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship

between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule is directed towards applicants and participants in HUD's single family mortgage insurance program. It effects no changes in the current relationships between the federal government, the states and their political subdivisions in connection with this program.

### C. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. This rule eliminates a cumbersome administrative requirement for borrowers participating in HUD's single family mortgage insurance program. No significant change in existing HUD policies or programs will result from the promulgation of this rule, as those policies and programs relate to family concerns.

### E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant impact on a substantial number of small entities. This rule does not significantly alter FHA insurance benefits, but removes a strict impediment to those applying for mortgage insurance. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities.

### F. Regulatory Agenda

This final rule was listed as item 1791 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57654) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

### List of Subjects in 24 CFR Part 203

Hawaiian natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR part 203 is amended as follows.

## PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b; 42 U.S.C. 3535(d). In addition, subpart C is also issued under 12 U.S.C. 1715(u).

2. Section 203.33 is amended by removing paragraph (b), and by redesignating paragraph (c) as paragraph (b).

Dated: November 4, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94-28509 Filed 11-17-94; 8:45 am]

BILLING CODE 4210-27-P

## 24 CFR Parts 880, 881, and 883

[Docket No. R-94-1671; FR-3122-F-05]

RIN 2501-AB35

## Preferences for Admission to Assisted Housing; Correction to Final Rule

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule; correction.

**SUMMARY:** This document revises the applicability provisions of regulations for the Section 8 new construction and substantial rehabilitation programs. These applicability provisions state that the management requirements of the rules do not apply to projects that came under contract with HUD before the date of issuance of a major revision of those rules published in 1979-80. Since the changes to the system of Federal and local preferences for admission to the new construction and substantial rehabilitation programs that were made by a 1990 statute apply to all projects operated under these programs, this final rule makes a technical correction to the applicability sections to provide that the HUD regulations implementing the statutory Federal preference system apply to all Section 8 new construction and substantial rehabilitation (including State Housing Agency administered) projects under these rules.

**EFFECTIVE DATE:** December 19, 1994.

**FOR FURTHER INFORMATION CONTACT:** Barbara D. Hunter, Acting Director, Planning and Procedures Division, Office of Multifamily Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-3944 (voice); (202) 708-4594 (TDD). These telephone numbers are not toll-free.

## SUPPLEMENTARY INFORMATION:

### I. Background

The applicability sections of the Section 8 Housing Assistance Payments Programs for New Construction, Substantial Rehabilitation, and State

Housing Agencies (§§ 880.104(b), 881.104(b), and 883.105(b)) currently state that the subpart dealing with management of projects, which includes the preference requirements, applies to projects "for which an Agreement [to Enter into Housing Assistance Payments Contract] was not executed before the effective date of these revised regulations."

The "revised regulations" referenced in these provisions were the ones published in late 1979 and early 1980 for the three different programs. For the New Construction program, the regulations were published on October 15, 1979 (44 FR 59410); for the Substantial Rehabilitation program, the regulations were published on January 31, 1980 (45 FR 7085); and for the State Housing Agency program, the regulations were published on January 30, 1980 (45 FR 6889).

## II. Applicability of Preference Requirements

The subject of Federal preference in admissions to these programs has been addressed in subsequent amendments of the management subpart of these regulations, including the final rule published on July 18, 1994 (59 FR 36616). The Federal preference requirements, now stated in a 1990 statutory provision (section 545(c) of the Cranston-Gonzalez National Affordable Housing Act, 104 Stat. 4220, 42 U.S.C. 1437f note), apply to all Section 8 new construction and substantial rehabilitation (including State Housing Agency administered) projects. The date the Agreement between the Department and the project owner was executed does not affect the applicability of the 1990 preference requirements. Consequently, the applicability sections of the regulations for these programs should have been changed in the July 1994 rule on preferences, and this correction is being published to clarify that the Federal preference regulations (§§ 880.613-880.617, 881-613-881.617, and 883.714-883.718) do apply to all Section 8 new construction and substantial rehabilitation projects, regardless of the date of execution of the Agreement.

## III. Findings and Certifications

### A. Impact on the Environment

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332, in connection with the previous final rule on

preferences. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

### B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule have impact on States or their political subdivisions only to the extent required by the statute being implemented. Since the rule merely carries out a statutory mandate and does not create any new significant requirements, it is not subject to review under the Executive Order.

### C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. The rule merely carries out the mandate of federal statute with respect to admission preferences.

### D. Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it does not place major burdens on housing owners.

### E. Regulatory Agenda

This rule was listed as item 1764 in the Department's Semiannual Regulatory Agenda published on November 14, 1994 (59 FR 57632, 57648) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

### F. Catalog

The Catalog of Federal Domestic Assistance number for the programs affected by this rule is 14.182.

### List of Subjects

#### 24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

#### 24 CFR Part 881

Grant programs—housing and community development, Rent

subsidies, Reporting and recordkeeping requirements.

#### 24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, chapter VIII of title 24 of the Code of Federal Regulations is amended as follows:

### PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citation for part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

2. In § 880.104, a new paragraph (d) is added, to read as follows:

#### § 880.104 Applicability of revised regulation.

\* \* \* \* \*

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of §§ 880.613 through 880.617 (concerning preferences for selection of applicants) apply to all projects, regardless of when an Agreement was executed.

### PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

3. The authority citation for part 881 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611-13619.

4. In § 881.104, a new paragraph (d) is added, to read as follows:

#### § 881.104 Applicability of revised regulation.

\* \* \* \* \*

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of §§ 881.613 through 881.617 (concerning preferences for selection of applicants) apply to all projects, regardless of when an Agreement was executed.

### PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

5. The authority citation for part 883 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

6. In § 883.105, a new paragraph (d) is added, to read as follows:

**§ 883.105 Applicability of revised regulation.**

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of §§ 883.714 through 883.718 (concerning preferences for selection of applicants) apply to all projects, regardless of when an Agreement was executed.

Dated: October 31, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94-28511 Filed 11-17-94; 8:45 am]

BILLING CODE 4210-27-P

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 9**

[FRL-5108-3]

**OMB Approval Numbers Under the Paperwork Reduction Act; Standards of Performance for New Stationary Sources**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that displays the control numbers issued by the Office of Management and Budget (OMB) under the PRA. This technical amendment updates the table to display accurately in the Code of Federal Regulations (CFR) changes in the status of the OMB approvals related to one EPA regulation previously included in the table and to add one approval to the table.

**EFFECTIVE DATE:** This final rule is effective on December 19, 1994.

**FOR FURTHER INFORMATION CONTACT:** Tom Eagles (202) 260-5585.

**SUPPLEMENTARY INFORMATION:** EPA is today amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. Today's amendment updates the table to display accurately those information requirements promulgated under several rules. The affected regulations are codified at 40 CFR part 60, subparts S, T, U, V, W, and X. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and

the current OMB control numbers. This display of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the PRA (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR 1320.

The ICRs were previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

**List of Subjects in 40 CFR Part 9**

Reporting and recordkeeping requirements.

Dated: November 14, 1994.

Carol M. Browner,  
Administrator.

For the reasons set out in the preamble, chapter I, title 40 of the Code of Federal Regulations, is amended as follows:

1. In Part 9:

a. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

b. Section 9.1 is amended by removing the entries "60.203(a),(c)", "60.204", "60.213(a),(c)", "60.214", "60.223(a),(c)", "60.224", "60.233(a),(c)", "60.234", "60.243(a),(c)", and "60.244".

c. Section 9.1 is amended by adding the following entries under the indicated heading in numerical order:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

40 CFR Citation	OMB Control No.
Standards of Performance for New Stationary Sources <sup>1</sup>	
60.192(b)	2060-0031
60.194-60.195	2060-0031
60.203-60.204	2060-0037
60.213-60.214	2060-0037
60.223-60.224	2060-0037

40 CFR Citation	OMB Control No.
60.233-60.234	2060-0037
60.243-60.244	2060-0037

<sup>1</sup> The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 60, subpart A, which are not independent information collection requirements.

[FR Doc. 94-28546 Filed 11-17-94; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Part 52**

[NM-21-1-6398a; FRL-5103-4]

**Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revision to the State Implementation Plan Correcting Sulfur Dioxide Enforceability Deficiencies**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

**SUMMARY:** This action approves a revision to the New Mexico State Implementation Plan (SIP) to include revisions to New Mexico Air Quality Control Regulations (AQCR) 602, 651, and 652. These revisions correct enforceability deficiencies and strengthen the provisions of the regulations. This action also removes AQCR 605 from the New Mexico SIP because AQCR 605 has never applied to a facility within the State, and the State's operating permits and new source review programs would govern any such sources which would exist in the future.

**DATES:** This final rule will become effective on January 17, 1995 unless notice is received by December 19, 1994 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the *Federal Register*.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

New Mexico Environment Department, Air Monitoring & Control Strategy Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7258.

#### SUPPLEMENTARY INFORMATION:

##### Background

A nation-wide effort is underway to have sulfur dioxide (SO<sub>2</sub>) enforceability deficiencies identified and corrected in SIPs before operating permit programs become effective. Because the operating permit programs will initially codify underlying SIP requirements, it is important that the underlying SIP be enforceable so that permits themselves will be enforceable. The EPA, Region 6, provided a list of deficiencies in AQCRs 602, 605, 651, and 652 to the State of New Mexico by cover letter dated March 13, 1991. The Region used the "SO<sub>2</sub> SIP Enforceability Checklist" when reviewing the New Mexico regulations for enforceability deficiencies. This checklist, developed by the EPA, was included as an attachment to the November 28, 1990, memorandum from Robert Bauman and Rich Biondi to the Air Branch Chiefs. This memorandum, as well as the EPA, Region 6, March 13, 1991, letter are included as attachments to the Technical Support Document. The checklist focused on the following topics: (1) Clarity; (2) averaging times consistent with protection of the SO<sub>2</sub> National Ambient Air Quality Standards (NAAQS); (3) clear compliance determinations; (4) continuous emissions monitoring; (5) adequate reporting and recordkeeping requirements; (6) director's discretion issues; and (7) stack height issues.

##### Analysis of State Submission

###### A. Procedural Background

The Clean Air Act (the Act) requires states to observe certain procedural requirements in developing implementation plans for submission to the EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a state must be adopted after reasonable notice and public hearing. Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a state under the Act must be adopted by such state after reasonable notice and

public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

The State of New Mexico held a public hearing on October 8, 1993, to entertain public comment on proposed revisions to AQCRs 602, 605, 651, and 652 addressing enforceability corrections, including the removal of AQCR 605 from the New Mexico SIP. There were no written public comments submitted in conjunction with the public hearing. Following the public hearing and consideration of hearing comments, the revisions were adopted by the State and filed with the State Records and Archives Center on November 17, 1993. The revisions were submitted by the Governor to the EPA by cover letter dated January 28, 1994.

The SIP revision package was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. A letter dated March 30, 1994, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

###### B. Review of Revisions to AQCRs 602, 605, 651, and 652

The State of New Mexico revised AQCRs 602, 605, 651, and 652 to correct SO<sub>2</sub> enforceability deficiencies and to update the New Mexico SIP. For a detailed explanation of each change to the regulations being approved in this action, please refer to the Technical Support Document. A brief summary of the revisions is presented in the following paragraphs.

###### 1. AQCR 602—Coal Burning Equipment—Sulfur Dioxide

The amendments to AQCR 602 affect two coal-fired power plants: (1) The Public Service Company of New Mexico San Juan Plant; and (2) the Plains Electric Escalante Plant. Language was added to the regulation to protect the three-hour SO<sub>2</sub> NAAQS, and excess emissions reporting requirements were clarified. The remainder of the revisions being approved in this action resulted from clarifying, renumbering, and

updating certain sections of the regulation. These changes represent small and noncontroversial revisions.

###### 2. AQCR 605—Oil Burning Equipment—Sulfur Dioxide

The revision of AQCR 605 consisted of the deletion of this regulation from the New Mexico SIP. The requirements of AQCR 605 have never applied to a facility within the State because no existing facility has ever burned enough oil to trigger the regulation's emission limit. In the future, major sources within the State which burn oil on a partial or standby basis will be governed by the upcoming operating permits program. Sulfur dioxide emissions from oil burning new sources, both minor and major, will be governed by the new source review permits program as well as by the Federal new source performance standards for industrial boilers (40 CFR part 60, subparts Db and Dc).

###### 3. AQCR 651—Sulfuric Acid Production Units—Sulfur Dioxide, Acid Mist and Visible Emissions

The amendments to AQCR 651 currently do not affect any facilities since the two existing facilities the regulation applied to, Climax Chemical in Lea County and the Quivera Mining Ambrosia Lake Plant in Cibola County, have closed and are not currently in operation. The State deleted the provisions applicable to new sources because that language was duplicative of the State's delegated Federal new source performance standards (NSPS) covering these sources. Language was added to the regulation to protect the three-hour SO<sub>2</sub> NAAQS, and compliance determination methods were clarified, including the involvement of the EPA in the approval of equivalent test methods and alternative means of continuous emission monitoring (CEM) verification. The State also added a 15-minute cycling time provision for CEM systems pursuant to 40 CFR part 51, appendix P, section 3.4.2. The remainder of the revisions to AQCR 651 resulted from correcting typographical errors, and from clarifying, renumbering, and updating certain sections.

###### 4. AQCR 652—Nonferrous Smelters—Sulfur

The major revisions to AQCR 652 affect the Phelps Dodge Hidalgo Copper Smelter at Playas as well as any new smelters. The Phelps Dodge Copper Smelter at Hurley is only affected by minor revisions to this regulation. The major revisions to AQCR 652 specify the methods for calculating and reporting

the sulfur removal rate for new smelters in accordance with a written plan developed cooperatively by the New Mexico Environment Department and Phelps Dodge Hidalgo, and reviewed and approved by the EPA. This written plan is being approved in this **Federal Register** action. In summary, the plan outlines the requirements for a monthly physical inventory of sulfur bearing materials plantwide, and for the manner in which the monthly sulfur recovery is calculated (dividing the tonnage of sulfur recovered by the tonnage of sulfur input).

The State also added provisions calling for the use of best engineering practices regarding fugitive sulfur emissions from new nonferrous smelters. Compliance determination methods were also clarified and revised to include the involvement of the EPA in the approval of equivalent test methods and alternative means of CEM verification. In addition, reporting and recordkeeping provisions were added for new nonferrous smelters. The remainder of the revisions to the regulation resulted from clarifying, renumbering, and updating certain sections.

#### Final Action

The EPA is approving a revision to the New Mexico SIP to include revisions to AQCRs 602, 605, 651, and 652. These revisions correct enforceability deficiencies and strengthen the provisions of AQCRs 602, 651, and 652, and remove AQCR 605 from the New Mexico SIP as discussed above. The revisions were filed with the State Records and Archives Center on November 17, 1993, and were submitted by the Governor to the EPA by cover letter dated January 28, 1994.

The EPA has reviewed these revisions to the New Mexico SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments.

However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Thus, this action will be effective January 17, 1995 unless, by December 19, 1994 notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not

institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 17, 1995.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors, and in relation to relevant statutory and regulatory requirements.

#### Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 17, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

#### Executive Order

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur dioxide.

**Note:** Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 26, 1994.

William B. Hathaway,

Acting Regional Administrator (6A).

40 CFR part 52 is amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(58) to read as follows:

#### § 52.1620 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(58) A revision to the New Mexico State Implementation Plan (SIP) to include revisions to AQCRs 602, 605, 651, and 652, submitted by the Governor by cover letter dated January 28, 1994. The revision to AQCR 605 consists of removing AQCR 605 from the New Mexico SIP.

(i) Incorporation by reference.

(A) Revisions to New Mexico Air Quality Control Regulation 602—*Coal Burning Equipment—Sulfur Dioxide*, Section A.1, Section A.2, Section A.3, Section B.1, Section C.1, Section E.2.a, Section E.2.d, Section F.1.b, Section F.7 and Section G, as filed with the State Records and Archives Center on November 17, 1993.

(B) Revisions to New Mexico Air Quality Control Regulation 651—*Sulfuric Acid Production Units—Sulfur Dioxide, Acid Mist and Visible Emissions*, Section A, Section B, Section C, Section D, Section E, Section F, Section G and Section H, as filed with the State Records and Archives Center on November 17, 1993.

(C) Revisions to New Mexico Air Quality Control Regulation 652—*Nonferrous Smelters—Sulfur*, Section B.2, Section C.1, Section D, Section G, Section H, Section I, Section J, Section K and Section L, as filed with the State

Records and Archives Center on November 17, 1993.

(ii) Additional material.

(A) The document entitled "Hidalgo Smelter Sulfur Recovery Procedures," including appendix 1, "Physical Inventory for Sulfur Recovery Calculations," and appendix 2, "Monthly Sulfur Recovery Calculation."

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#### 40 CFR Part 52

[IL25-2-6544; FRL 5097-4]

### Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rule.

**SUMMARY:** On May 25, 1994, the USEPA proposed to conditionally approve a State Implementation Plan (SIP) request for Lake Calumet, McCook, and Granite City, Illinois. The request was submitted by the State of Illinois for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). Public comments were solicited on the proposed SIP revision, and on USEPA's proposed rulemaking action. The public comment period ended on June 24, 1994, and two public comment letters were received. This rulemaking action conditionally approves, in final, the SIP revision request for Lake Calumet, McCook, and Granite City, Illinois as requested by Illinois.

**EFFECTIVE DATE:** This final rule becomes effective on December 19, 1994.

**ADDRESSES:** Copies of the State's submittal, and other materials relating to this rulemaking are available at the following address for review: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

The docket may be inspected between the hours of 8:30 a.m. and 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by the USEPA for copying docket material.

A copy of this SIP revision is available for inspection at: Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102), room 1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** David Pohlman, Regulation

Development Branch, Regulation Development Section (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-3299.

Anyone wishing to visit the Region 5 offices should first contact David Pohlman.

#### SUPPLEMENTARY INFORMATION:

##### Background

Under section 107(d)(4)(B) of the Clean Air Act (Act), as amended on November 15, 1990 (amended Act), certain areas ("initial areas") were designated nonattainment for PM. Under section 188 of the amended Act these initial areas were classified as "moderate". The initial areas include the Lake Calumet, McCook, and Granite City, Illinois, nonattainment areas. (See 40 CFR 81.314 for a complete description of these areas.) Section 189 of the amended Act required State submission of a PM SIP for the initial areas by November 15, 1991.

Illinois submitted the required SIP revision for the Lake Calumet, McCook, and Granite City, Illinois, PM nonattainment areas to USEPA on May 15, 1992. The submitted control measures for point sources in the Lake Calumet, McCook, and Granite City nonattainment areas include a general grain loading limit of 0.03 grains per standard cubic foot (gr/scf), as well as control measures for specific sources. The specific control measures consist of regulations that impose grain loading limits, pounds per ton limits, and pounds per million British thermal units limits (lb/MMBTU). Other control measures for specific sources are listed in sections 212.324, 212.362, 212.425, 212.458, and 212.464 of Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter 1: Pollution Control Board, of the Illinois Administrative Code (35 IAC). The new regulations impose tighter and more enforceable limits than the current SIP approved rules.

Upon review of Illinois' submittal, USEPA identified several concerns. Illinois submitted a letter on March 2, 1994, committing to satisfy all of these concerns within one year of final conditional approval. The concerns are as follows:

1. The USEPA believes that Illinois has underestimated emissions from the roof monitors for the Basic Oxygen Furnaces (BOFs) at Granite City Steel (GCS) and Acme Steel; the quench towers at GCS, Acme Steel, and LTV Steel; the rotary kiln incinerator at CWM Chemical Services; 3 coal fired boilers at CPC International; and, 3 coal

fired boilers at GM Electromotive Division.

2. Because of the length of time it may take to determine whether an area has attained the standards, USEPA recommends that PM nonattainment area SIP submittals demonstrate maintenance of the PM NAAQS for at least 3 years beyond the applicable attainment date. (See an August 20, 1991, memorandum from Fred H. Renner, Jr. to Regional Air Branch Chiefs titled "Questions and Answers for Particulate Matter, Sulfur Dioxide, and Lead.") While Illinois' submittal did take growth into account in the modeling analysis, it did not adequately address maintenance of the NAAQS for PM in the nonattainment areas.

3. On December 29, 1992, USEPA approved general opacity limitations for the State of Illinois. See 57 FR 61834. These opacity limitations are found at subpart B under 35 IAC 212. Subpart B of 35 IAC 212 is a recodification of the former Rule 202. These regulations impose a 30 percent opacity limit for most sources.

The coke oven regulations of the Illinois SIP exempt coke oven sources from all of Rule 202 of the State of Illinois Air Pollution Control Regulations. This exemption in the state regulations was approved on September 3, 1981, (46 FR 44177) as Rule 203(d)(5)(B)(i) and is now codified as 35 IAC 212.443(a).

Currently, PM emissions from coke oven combustion stacks in Illinois are limited to 0.05 grains per dry standard cubic foot (gr/dscf). USEPA conditionally approved this limit on September 3, 1981. Currently, coke oven combustion stacks exist at LTV Steel, GCS, and Acme Steel. The LTV combustion stack is limited to a 0.03 gr/dscf by a Prevention of Significant Deterioration permit.

USEPA inspectors have observed emissions of greater than 60 percent opacity at the LTV Steel coke oven combustion stack. As recent stack tests have confirmed, this stack is not in compliance with its mass limit while emitting at this opacity. However, without the benefit of an opacity limit, enforcement was delayed for months until stack test results were obtained, even after high opacity emissions were observed.

To better assure compliance with the grain loading limit, the State needs to impose an opacity limit on the coke oven combustion stacks that is reflective of their mass emission limit.

4. USEPA considers the rules that apply to the electric arc furnace roof vents at American Steel Foundries to be unenforceable because the stacks can

not be tested for compliance. The Illinois Environmental Protection Agency (IEPA) should develop an enforceable limit that is reflective of the emissions which are in the modeled attainment demonstration.

5. The following enforceability concerns:

a. Section 212.107, Measurement Methods for Visible Emissions, states that Method 22 should be used for "detection of visible emissions". This could be misinterpreted as requiring use of Method 22 for sources subject to opacity limits as well as sources subject to limits on detectability of visible emissions. USEPA recommends revising the language of the rule to state that "For both process emission sources and fugitive particulate matter sources, a determination as to the presence or absence of visible emissions shall be in accordance with Method 22 \* \* \*".

b. Measurement methods for opacity, visible emissions, and "PM" are in section 212.110, and in separate sections 212.107, 212.108, and 212.109. The measurement methods in these sections are not always consistent with each other. USEPA recommends that the measurement methods in 212.107, 212.108, and 212.109 be integrated with section 212.110.

c. Several of the submitted rules contain language which exempts sources with no visible emissions from mass emissions limits. It is USEPA's understanding that the State intends for these exemptions to apply to small, well-controlled sources. However, the way the exemptions are worded, they could be misinterpreted to exclude many other sources from mass emissions limits. The rules containing these exemptions need to be clearer about exactly what sources are to be exempt, and when.

#### Response to Public Comments

The public comment period ended on June 24, 1994. A joint comment letter was submitted by Acme Steel Company, Granite City Division of National Steel Company, Illinois Steel Group, and LTV Steel Company (steel companies). Public comments were also received from the American Lung Association of Metropolitan Chicago (ALAMC). The comments, and USEPA responses follow.

**Comment:** The steel companies commented that, for various reasons, USEPA's method of estimating BOF roof monitor emissions (as described in the January 10, 1994, Technical Support Document) results in unrealistically high emissions rate estimations.

**Response:** The State did not include emissions from BOF roof monitors in

either the emissions inventory or the attainment demonstration. It is clear that these sources do emit significant amounts of PM. While USEPA believes the emissions estimates in the Technical Support Document to be reasonable, they are not meant to be prescriptive. The USEPA realizes that estimating BOF roof monitor emissions can be somewhat subjective, and that different methods and assumptions may be used. When Illinois revises the emissions inventory to include these sources, USEPA will determine the acceptability of Illinois' emissions estimates based on their particular technical merits.

**Comment:** The steel companies believe that USEPA has miscalculated the emissions from quench towers by using a 3,000 milligram per liter (mg/l) Total Dissolved Solids (TDS) concentration to determine emissions. The steel companies believe that the rules establish a maximum TDS limit of 1,200 mg/l.

**Response:** 35 IAC 212.443(h)(2) establishes a weekly average TDS limit of 1,200 mg/l for quench water. The Illinois rules do not establish a daily maximum concentration. The TDS concentration in quench water on any given day could greatly exceed 1,200 mg/l, without violating the weekly average limit. Because the NAAQS for PM is a 24 hour standard, the State must use the maximum allowable daily TDS concentration to determine allowable quench tower emissions. The USEPA believes that 3,000 mg/l is a reasonable estimate of the maximum allowable daily TDS concentration in quench water under the weekly average rule.

**Comment:** The steel companies comment that the current grain loading limit on coke oven combustion stacks is enforceable through stack tests, and excess opacity can be the basis for requiring stack tests. There is, therefore, no basis for requiring opacity limits on coke oven combustion stacks.

**Response:** On December 29, 1992, USEPA approved general opacity limitations for the State of Illinois under 35 IAC 212 subpart B. See 57 FR 61834. These regulations impose a 30 percent opacity limit for most sources. It was originally thought that the 30 percent opacity limit would apply to the combustion stack for the LTV coke ovens. However, the Illinois coke oven regulations of the State regulations exempt coke oven sources from the general opacity limitations. This exemption in the State regulations was approved on September 3, 1981 (46 FR 44177) as Rule 203(d)(5)(B)(i) and is now codified as 35 IAC 212.443(a). While there are currently federally enforceable grain loading limits on coke

oven combustion stacks, enforcement of these limits can be a lengthy process. Once high opacity is observed, it can still take months for stack test results to be obtained. An opacity limit would not necessarily be more stringent than the current grain loading limit, but would be more easily enforceable.

**Comment:** The ALAMC comments that the growth rates used by the State to predict future increases in background concentrations are unrealistically low, and that USEPA should require the State to use a realistic growth rate for background PM levels.

**Response:** The growth factors used by Illinois were calculated by averaging successive 5-year growth factors for the 5 years preceding the study. The USEPA agrees that this method does not result in a realistic future growth rate. As stated in this notice, the State will be required to submit, as part of the revised attainment demonstration, a demonstration that the NAAQS for PM will be protected for at least 3 years beyond the December 31, 1994, attainment date. The State must use more realistic estimations of future growth, such as projected growth rates, for the maintenance demonstration.

**Comment:** The ALAMC comments that the omission of mobile sources of PM from the emissions inventory is inconsistent with section 172(c)(3) of the Act and should be corrected.

**Response:** When compared to the major industrial sources in Illinois' PM nonattainment areas, PM emissions from mobile sources represent only a small portion of the total PM emissions. Also, the PM air quality impacts of mobile sources is a relatively constant proportion of the peak impacts, due to the more widespread or regional nature of these emissions. For these reasons, it is more reasonable to include these sources as a portion of the area's background concentration than to specifically inventory and model mobile sources. Other sources which are not specifically modeled, but are included in the area's background PM concentrations are combustion for space heating, construction activities, reentrainment of roadway dust, and windblown dust.

**Comment:** The ALAMC comments that reasonably available mobile source controls, including enforcement of the State's heavy duty diesel vehicle opacity limit, should have been considered or, if not considered, the State should give a reason for not doing so.

**Response:** In Illinois' initial study of the nonattainment areas, the State found that industrial emission sources were the dominant sources effecting air

quality in these areas. The State also found that impacts from non-industrial sources, such as automobiles and reentrained road dust on public roads and construction, were a much smaller component of peak air quality impacts. For this reason, Illinois concentrated its efforts toward quantifying emissions associated with industrial activities. Also, if the State adopts less than all available measures but demonstrates, adequately and appropriately, that Reasonable Further Progress (RFP) and attainment of the PM NAAQS is assured, and application of all such available measures would not result in attainment any faster, then a plan which requires implementation of less than all available measures may be approved.

**Comment:** The ALAMC comments that certain monitors may show exceedances of the annual NAAQS for PM, but this data is not statistically acceptable. ALAMC states that USEPA should require Illinois to provide statistically acceptable data from its monitors.

**Response:** The data requirements for determining attainment and nonattainment of the PM NAAQS can be found at 40 CFR part 50, appendix K. A minimum of 75 percent of the scheduled PM samples per quarter are required to use the computational formulas described. However, this criterion does not apply when less data is sufficient to unambiguously establish nonattainment. Nonattainment of the annual standard can be demonstrated on the basis of quarterly mean concentrations developed from observed data combined with one-half the minimum detectable concentration substituted for missing values. Therefore, even if the data doesn't meet the 75 percent requirement, it can still be used to show a violation of the annual standard.

#### Final Rulemaking Action

The USEPA conditionally approves the requested Lake Calumet, McCook, and Granite City nonattainment area PM SIP revision submitted on May 15, 1992.

The USEPA is not, at this time, taking action on 35 IAC 211.122. This rule, which contains definitions, has been repealed on the State level since being submitted to USEPA on May 15, 1992. The State consolidated and recodified its various definitions into other sections. These definitions have been submitted to USEPA, and USEPA approved their incorporation into the Illinois SIP on September 9, 1994 (59 FR 46562). That approval is codified at 40 CFR 52.720(c)(100). The submittal

addressed in this final rule includes the following new or revised rules:

- 35 IAC 211.101 Incorporation by Reference
- 35 IAC 212.107 Measurement Methods for Visible Emissions
- 35 IAC 212.108 Measurement Methods for PM-10 Emissions
- 35 IAC 212.109 Measurement Methods for Opacity
- 35 IAC 212.110 Measurement Methods for Particulate Matter
- 35 IAC 212.113 Incorporation by Reference
- 35 IAC 212.210 Emission Limitations for Certain Fuel Combustion Emission Sources Located in the Vicinity of Granite City
- 35 IAC 212.302 Geographical Areas of Application
- 35 IAC 212.309 Operating Program
- 35 IAC 212.316 Emission Limitations for Sources in Certain Areas
- 35 IAC 212.324 Process Emission Sources in Certain Areas
- 35 IAC 212.362 Sources in Certain Areas
- 35 IAC 212.425 Sources in Certain Areas
- 35 IAC 212.458 Sources in Certain Areas
- 35 IAC 212.464 Sources in Certain Areas
- 35 IAC 212 Illustration D McCook Vicinity Map
- 35 IAC 212 Illustration E Lake Calumet Vicinity Map
- 35 IAC 212 Illustration F Granite City Vicinity Map

The conditional approval is based on the State's enforceable commitment to meet five requirements within one year from the date of final conditional approval. The State submitted a letter on March 2, 1994, committing to meet these requirements within one year of final conditional approval. The first requirement is for the State to adopt and submit additional enforceable control measures, if necessary, that will achieve attainment. The second requirement is for the State to submit a complete and accurate emissions inventory (including corrected emissions estimates, as well as any new control measures which may be needed) and an acceptable modeled attainment demonstration. The third requirement is for the State to impose an opacity limit for coke oven combustion stacks which is reflective of their mass emission limits. The fourth requirement is for the State to provide an appropriate regulation for the electric arc furnaces at American Steel Foundries. The fifth requirement is for the State to correct the three other enforcement concerns listed above as 5(a), 5(b), and 5(c).

If the State ultimately fails to meet its commitment within one year of final conditional approval, then USEPA's action for the State's requested SIP revision will automatically convert to a final limited approval/disapproval. "Limited" approval would not mean that USEPA has approved the control measures as satisfying the specific Act requirement for the State to implement

Reasonably Available Control Measures (RACM) (including Reasonably Available Control Technology (RACT)) in moderate PM nonattainment areas. See sections 172(c)(1) and 189(a)(1)(C) of the Act. Rather, a limited approval of these measures by USEPA would mean that the emission limitations and other control measure requirements become part of the applicable implementation plan and are federally enforceable by USEPA. The USEPA may grant such a limited approval under section 110(k)(3) of the Act in light of the general authority delegated to USEPA under section 301(a) of the Act which allows USEPA to take actions necessary to carry out the purposes of the Act.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 17, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act.)

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 30, 1994.

Valdas V. Adamkus,  
Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

**Subpart O—Illinois**

2. Subpart O is amended by adding § 52.719 to read as follows:

**§ 52.719 Identification of plan—Conditional approval.**

The plan revision commitments listed in paragraph (a) of this section were submitted on the date specified.

(a) On May 15, 1992, Illinois submitted a part D particulate matter (PM) nonattainment area plan for the Lake Calumet, McCook, and Granite City moderate nonattainment areas. This plan included control measures adopted in a final opinion and order of the Illinois Pollution Control Board, on April 9, 1992, in proceeding R91–22. The USEPA is conditionally approving the State's plan, contingent on fulfillment of the State's commitment to meet 5 requirements by November 20, 1995. The first requirement is for the State to adopt and submit additional enforceable control measures, if necessary, that will achieve attainment. The second requirement is for the State to submit a complete and accurate emissions inventory (including corrected emissions estimates, as well as any new control measures which may be needed) and an acceptable modeled attainment demonstration. The third requirement is for the State to impose an opacity limit for coke oven combustion stacks which is reflective of their mass emission limits. The fourth requirement is for the State to provide an appropriate regulation for the electric arc furnaces at American Steel Foundries. The fifth requirement is for the State to correct the following three other enforcement concerns: First, section 212.107, Measurement Methods for Visible Emissions, states that Method 22 should be used for "detection of visible emissions". This could be misinterpreted as requiring use of Method 22 for sources subject to opacity limits as well as sources subject to limits on detectability of visible emissions. USEPA recommends revising the language of the rule to state that "for both process emission sources and fugitive particulate matter sources, a determination as to the presence or absence of visible emissions shall be in accordance with Method 22". Second, measurement methods for opacity, visible emissions, and "PM" are in section 212.110, and in separate sections 212.107, 212.108, and 212.109. The measurement methods in these

sections are not always consistent with each other. USEPA recommends that the measurement methods in 212.107, 212.108, and 212.109 be integrated with section 212.110. Third, several of the submitted rules contain language which exempts sources with no visible emissions from mass emissions limits. It is USEPA's understanding that the State intends for these exemptions to apply to small, well-controlled sources.

However, the way the exemptions are worded, they could be misinterpreted to exclude many other sources from mass emissions limits. The rules containing these exemptions need to be clearer about exactly what sources are to be exempt, and when. If the State fails to meet any portion of its commitment by the date listed above, the USEPA's conditional approval will automatically become a limited approval/disapproval without further regulatory action.

**(1) Incorporation by reference.**

(i) Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 211:

Definitions and General Provisions, Subpart A: General Provisions, Section 211.101. Adopted at 16 *Illinois Register* 7656, effective May 1, 1992. (ii) Illinois Administrative Code Title 35: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter c: Emission Standards and Limitations for Stationary Sources, Part 212: Visible and Particulate Matter Emissions, Subpart A: General, Sections 212.107, 212.108, 212.109, 212.110, 212.113; Subpart E: Particulate Matter Emissions from Fuel Combustion Sources, Section 212.210; Subpart K: Fugitive Particulate Matter, Sections 212.302, 212.309, 212.316; Subpart L: Particulate Matter from Process Emission Sources, Section 212.324; Subpart N: Food Manufacturing, Section 212.362; Subpart Q: Stone, Clay, Glass and Concrete Manufacturing, Section 212.425; Subpart R: Primary and Fabricated Metal Products and Machinery Manufacture, Section 212.458; Subpart S: Agriculture, Section 212.464; Section 212 Illustration D: McCook Vicinity Map, Illustration E: Lake Calumet Vicinity Map, and Illustration F: Granite City Vicinity Map. Adopted at 16 *Illinois Register* 7880, effective May 11, 1992.

(b) [reserved]

[FR Doc. 94–28486 Filed 11–17–94; 8:45 am]

BILLING CODE 6560–50–P

**40 CFR Part 70**

[NM001; AD–FRL–S107–4]

**Clean Air Act Final Interim Approval Operating Permits Program; New Mexico Environment Department**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** The EPA is promulgating interim approval of the operating permits program submitted by the New Mexico Environment Department (NMED) for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources with the exception of Bernalillo County and Indian Lands.

**EFFECTIVE DATE:** December 19, 1994.

**ADDRESSES:** Copies of the State's submittal and other supporting information used in developing the final interim approval are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before visiting day.

Environmental Protection Agency, Region 6, Air Programs Branch (6T–AN), 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733.  
New Mexico Environment Department, Harold Runnels Building, room So. 2100, 1190 St. Francis Drive, Santa Fe, New Mexico 87503.

**FOR FURTHER INFORMATION CONTACT:** Adele D. Cardenas, New Source Review Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, suite 700, Dallas, Texas 75202–2733, telephone 214–665–7210.

**SUPPLEMENTARY INFORMATION:****I. Background and Purpose****Introduction**

Title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) part 70 required that States develop and submit operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval and disapproval. Where a program substantially, but not fully, meets the

requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993, date, or by the end of an interim program, it must establish and implement a Federal program.

On May 19, 1994, EPA proposed interim approval of the operating permits program for the State of New Mexico. (See 59 FR 26158 (May 19, 1994)). The EPA received public comment on the proposal and compiled a final Technical Support Document (TSD) responding to those comments and briefly describing and clarifying aspects of the operating permits program. In this document, EPA is taking final action to promulgate interim approval of the operating permits program for the State of New Mexico.

## II. Final Action and Implications

### A. Analysis of State Submission

The State of New Mexico submitted to EPA, under a cover letter from the Governor dated November 15, 1993, the State's operating permits program. The submittal has adequately addressed all sixteen (16) elements required for full approval as discussed in part 70, except with regard to criminal fine authority. The State of New Mexico appropriately addressed all requirements necessary to receive interim approval of the State operating permits program pursuant to title V of the Act and 40 CFR part 70. The NMED agreed to seek correction of the statutory defect in the State's criminal fine authority during the next legislative session.

### B. Response to Comments

#### 1. Provisions for Implementing the Requirements of Section 112(g) of the Act

Two commenters questioned the timing for the implementation of section 112(g). The commenters were concerned that New Mexico will be forced to implement section 112(g) without the direction of a promulgated rule, thereby placing undo burden on sources striving to maintain compliance. For example, the commenters were concerned that a source would be required to implement case-by-case maximum achievable control technology (MACT) requirements twice; once as defined by the State and later, as defined by the promulgated section 112(g) rule. Both commenters requested that EPA defer issuance of the New Mexico interim approval until the section 112(g) rule has been promulgated by EPA. In the event that the EPA could not defer interim approval until the section 112(g)

rule is promulgated, the commenters requested that the interim approval be deferred until the statutory deadline for approval of the State's title V program (November 15, 1994).

The EPA recognizes the complexity of implementing section 112(g) requirements prior to promulgation of the Federal section 112(g) rule. EPA maintains, however, that despite delays in issuing a final section 112(g) rule, the Act still requires any State with an approved part 70 operating permits program to implement section 112(g) for all qualifying new and modified sources of hazardous air pollutants. Regarding the suggestion to delay issuance of the final interim approval notice for New Mexico, the EPA would like to clarify that it is a statutory requirement of the Act that the EPA must approve or disapprove a State's operating permits program within one year after the State's program submittal. The EPA must therefore approve the New Mexico Operating Permits Program no later than November 15, 1994. The State has requested that the approval of the program not be delayed.

The EPA has recently developed guidance discussing the period of initial section 112(g) implementation, "Guidance for Initial Implementation of Section 112(g)," from John Seitz, Director, Office of Air Quality Planning and Standards, June 28, 1994, addressing some of the concerns expressed by the commenters. In general, it allows States flexibility during the initial implementation period and indicates that the proposed section 112(g) rule (59 FR 15504, April 1, 1994) should be considered guidance for States as they make decisions regarding program implementation. In addition, this memorandum recommends not revisiting case-by-case MACT determinations made before the State adopts rules to implement the final Federal section 112(g) rule.

The proposed approval for the New Mexico Operating Permits Program published on May 19, 1994 (59 FR 26158), explained that New Mexico intends to implement section 112(g) of the Act with regard to new sources through the State's preconstruction process (See 59 FR 26158, 26160). For informational purposes, the EPA wishes to reaffirm that, as also stated in the proposed approval at 59 FR 26160, the State of New Mexico commits to appropriately implementing the existing and future requirements of section 112 in a timely manner, and modifications, including section 112(g) modifications, for all existing sources must be made through the procedures outlined in subsection II(2) of the proposed

approval notice at 59 FR 26160. The notice proposing approval of New Mexico's operating permits program at 59 FR 26160 cited the State's applicability requirements contained in Air Quality Control Regulation (AQCR) 770 section II(B)(3). Those requirements provide that the State's preconstruction process applies to all new and modified sources and its requirements become applicable requirements of all part 70 permits. No exceptions to these requirements for modifications to existing sources were noted in the proposed approval as to sources of hazardous air pollutants, and no such exceptions exist under New Mexico law or regulation. Therefore, this notice reaffirms these requirements set out in the proposed approval notice for modifications to all existing sources, without exception for those covered by section 112(g), and clarifies that, as with new sources, the State intends to implement section 112(g) for existing sources through its preconstruction process, as set out in AQCR 770 section II(B)(3) and referenced in subsection II(2) of the proposed approval notice at 59 FR 26160.

The EPA also wishes to clarify the mechanism the State intends to use for the implementation of Federal section 112(g) during the transition period before the Federal section 112(g) rule, proposed on April 1, 1994 (59 FR 15504) becomes final, and is adopted by the State. During this transition period, the State intends to use a two-pronged approach utilizing its existing preconstruction process. Immediately upon approval of the State's operating permits program, the State intends to implement section 112(g) through its existing preconstruction rule, AQCR 702. This rule was previously approved by the EPA to implement the preconstruction requirements of title I of the Act.

The second phase of New Mexico's section 112(g) implementation approach during the transition period is expected to be based on the State's adoption of a new rule based on the proposed Federal section 112(g) rule. This rule, AQCR 755, as proposed by the State, would reference the State's current preconstruction rule, and further clarify the requirements set out in the proposed Federal section 112(g) rule and its preamble. The State has already begun the process of revising its preconstruction program through the adoption of this new rule.

The State anticipates that AQCR 755 could be effective as early as December 18, 1994. When final, this new rule is expected to enhance the mechanism contained in the State's existing

preconstruction rule, AQCR 702, for the implementation of section 112(g). The EPA is still evaluating what additional steps may be necessary so that permits issued pursuant to AQCR 755 will be federally enforceable for the purpose of satisfying section 112(g). If AQCR 755 is not finally adopted by the State, or is adopted with substantial changes, AQCR 702 will continue to provide authority for the implementation of Federal section 112(g). After the final Federal section 112(g) rule is promulgated, the State will be required to formally revise its State rules accordingly.

The EPA further wishes to clarify certain aspects of the Federal-State relationship with regard to section 112(g). Implementation of section 112(g) by the State, including case-by-case determinations of MACT, is a requirement for approval of a State title V program. In other words, approval of the title V operating permits program confers on the State responsibility to implement section 112(g). Since the requirement to implement section 112(g) lies with the State in the first instance, there is no need for a delegation action apart from the title V program approval. EPA's approval of New Mexico's program for delegation of section 112 standards as promulgated does not affect this responsibility to implement section 112(g).

As noted above and set out in the proposed approval notice, the State's commitment to implement all existing and future requirements of section 112 of the Act, and all MACT standards promulgated in the future in a timely manner, includes a commitment to implement both promulgated section 112 Federal standards and section 112 requirements such as section 112(g) that are not federally promulgated standards.

## 2. Provisions for Implementing the Requirements for Radionuclide Sources

One commenter expressed the belief that an operator of a new radionuclide source would be exempt from Federal permitting requirements if modeling demonstrated that emissions from the facility would be below  $\frac{1}{10}$  Maximum Permissible Concentration. The commenter suggested that, if the permitting function is transferred from EPA to NMED, this exemption would apply through the State operating permits program.

The EPA is not aware of any exemptions from operating permit requirements for radionuclide sources. The EPA notes that any source subject to title V operating permits requirements which is also a radionuclide source, is required to obtain a part 70 operating permit,

regardless of the source's emissions levels and Nuclear Regulatory Commission (NRC) licensing status.

Another commenter requested clarification with respect to the applicability of the operating permits program to radionuclide sources, stating that inconsistencies existed between testimony on this subject presented by the NMED Air Quality Bureau in the development of the State regulations, and the language of the New Mexico Operating Permits Program proposed approval notice (59 FR 26158) with regard to radionuclides. The commenter further expressed the belief that radionuclides were not subject to State operating permits program requirements because the EPA has not yet defined the term "major source" for radionuclides.

The EPA would like to clarify that under the Act, all existing National Emission Standards for Hazardous Air Pollutants (NESHAPs) are considered applicable requirements for purposes of the operating permits program, and therefore must be included in the operating permits of part 70 sources and enforced as all other applicable requirements. However, at this time, part 70 requirements only apply to "major sources." Because EPA has not yet defined what would constitute a "major source" based solely on radionuclide emissions, sources of radionuclides are deferred from part 70 requirements until EPA forms a policy for non-major sources or for sources of radionuclides emissions, unless such sources are major under any other definition of "major source" contained in part 70. Sources which are major under another part 70 definition of "major source" are required to obtain part 70 operating permits, and their permits must include appropriate provisions to cover radionuclide NESHAPs.

The commenter further stated a belief that, based on the State's testimony during the State AQCR 770 hearing, it is not the intent of the New Mexico regulations to include radionuclides in the State's part 70 operating permits program until the EPA has established its national program for radionuclides. It is EPA's understanding that this is accurate with respect to any radionuclide sources that would be required to obtain permits solely because of emissions of radionuclides. However, for those radionuclide sources which are major sources subject to part 70 requirements for other reasons, part 70 operating permits must be obtained without exception under the New Mexico AQCR 770 permit regulations.

The commenter also stated that EPA has a responsibility to ensure that

Memoranda Of Understanding (MOUs) and settlement agreements with the NRC are considered prior to adoption and implementation of any new radionuclide regulations. As an example of a document which the commenter believes should be considered, the commenter cites EPA's February 7, 1994, proposed rescission notice for the 40 CFR part 61, subpart T regulation.

The EPA would like to note that all MOUs and settlement agreements will be considered when implementing new radionuclide regulations. In addition, the final rule rescinding 40 CFR part 61, subpart T, as applied to NRC-licensed uranium mill tailings, was published in the *Federal Register* on July 15, 1994, and subpart T is no longer an applicable requirement under part 70. However, for those major sources which are subject to part 70 requirements and also emit radionuclides at levels subject to NESHAPs requirements other than those formerly contained in subpart T, the radionuclide sources should be included in the part 70 operating permit.

The commenter also expressed the opinion that, prior to the adoption and implementation of radionuclide programs as part of the title V program, EPA must, through public rulemaking, promulgate a definition of "major source" for radionuclides under the provisions of section 112(g), and through public rulemaking, modify existing radionuclide standards established by EPA.

As discussed above, no source will be required to obtain an operating permit solely because of radionuclide emissions, until EPA forms a policy for non-major sources or for sources of radionuclide emissions. However, as stated above, radionuclide sources subject to part 70 requirements under another part 70 definition of "major source" must obtain part 70 operating permits which govern radionuclide emissions.

## 3. Definition of Title I Modification

For the reasons set forth in the EPA's proposed rulemaking to revise the interim approval criteria of 40 CFR part 70 (59 FR 44572, August 29, 1994), the EPA believes the phrase "modification under any provisions of title I of the Act" in 40 CFR 70.7(e)(2)(i)(A)(5) is best interpreted to mean literally any change at a source that would trigger permitting authority review under regulations approved or promulgated under title I of the Act. This would include State preconstruction review programs approved by EPA as part of the State Implementation Plan under section 110(a)(2)(C) of the Act and regulations

addressing source changes that trigger the application of NESHAPs established pursuant to section 112 of the Act prior to the 1990 amendments. New Mexico's operating permits program does not define "title I modification" to include any modification permitted through its minor new source review (NSR) preconstruction permit program.

On August 29, 1994, the EPA proposed revisions to its criteria for interim approval of State operating permits programs under 40 CFR 70.4(d) to allow State operating permits programs with a narrower definition of "title I modification" like New Mexico's to receive interim approval (59 FR 44572). The EPA also solicited public comment on the proper interpretation of "title I modification." (59 FR 44572, 44573). The EPA stated that if, after considering the public comments, it continued to believe that the phrase "title I modifications" should be interpreted as including minor NSR changes, it would revise the interim approval criteria as needed to grant States that adopted a narrower definition, interim approval.

The EPA intended to finalize its revisions to the interim approval criteria under 40 CFR 70.4(d) before taking final action on part 70 operating permits programs submitted by the States. However, it will not be possible to delay approval of operating permits programs until final action has been taken on EPA's proposed revisions to the part 70 interim approval criteria. This is because publication of the proposed revisions was delayed until August 29, 1994, and the EPA received several requests to extend the public comment period until November 27, 1994.<sup>1</sup> Given the importance of the issues in that rulemaking to States, sources and the public, but mindful of the need to take action quickly, the EPA agreed to extend the comment period until October 28, 1994 (see 59 FR 52122 (October 14, 1994)). Consequently, final action to revise the interim approval criteria will not occur before the deadline for EPA action on State operating permits programs such as New Mexico's, that were submitted on or before November 15, 1993.<sup>2</sup> The EPA believes it would be inappropriate to delay action on New Mexico's operating permits program,

perhaps for several months, until final action is taken on the proposed revisions to the part 70 interim approval criteria. The EPA also believes it would be inappropriate to grant interim approval to New Mexico on this issue before final action is taken to revise the current interim approval criteria of 40 CFR 70.4(b) to provide a legal basis for such an interim approval. Until the revision to the interim approval criteria is promulgated, the EPA's choices are to either fully approve or disapprove the narrower "title I modification" definition in States such as New Mexico. For the reasons set forth below, the EPA believes that disapproving such operating permits programs at this time based solely on this issue would be inappropriate.

First, the EPA has not yet conclusively determined that a narrower definition of "title I modification" is incorrect and thus a basis for disapproval (or even interim approval). The EPA has received numerous comments on this issue as a result of the August 29, 1994 Federal Register notice, and the EPA cannot and will not make a final decision on this issue until it has evaluated all comments on that proposed rulemaking. Second, the EPA believes that the New Mexico Operating Permits Program should not be disapproved because the EPA itself has not yet been able to resolve this issue through rulemaking. Moreover, disapproving operating permits programs from States such as New Mexico that submitted their operating permits programs to the EPA on or before the November 15, 1993, statutory deadline, could lead to the unfair result that these States would receive disapprovals, while States which were late in submitting operating permits programs could take advantage of revised interim approval criteria should those criteria become final. In effect, States would be severely penalized for having made timely operating permits program submissions to the EPA. Finally, disapproval of a State operating permits program for a potential problem that primarily affects permit revision procedures would delay the issuance of part 70 permits, hampering State/Federal efforts to improve environmental protection through the operating permits program.

For the reasons mentioned above, the EPA is approving the New Mexico Operating Permits Program's use of the narrower definition of "title I modification" at this time.<sup>3</sup> However,

should the EPA in the interim approval criteria rulemaking make a final determination that such a narrow definition of "title I modification" is incorrect and that a revision of the interim approval criteria is warranted, the EPA will propose further action on New Mexico's operating permits program so that the State's definition of "title I modification" could become grounds for interim approval requiring revision prior to the EPA's granting of full approval to that program.<sup>4</sup> An operating permits program like New Mexico's that receives full approval of its narrower "title I modification" definition pending completion of the EPA's rulemaking must ultimately be placed on an equal footing with programs of States that receive interim approval in later months under any revised interim approval criteria because of the same issue. Converting the full approval on this issue to an interim approval after the EPA completes its rulemaking would avoid this inequity. The EPA anticipates that an action to convert the full approval on the "title I modification" issue to an interim approval would be effected through an additional rulemaking, so as to ensure that there is adequate notice of the change in approval status.

### C. Options for Approval

The EPA is promulgating interim approval of the State's operating permits program submitted by the NMED on November 15, 1993. The State must make the following change to receive full approval: correct the statutory defect in criminal fine authority. In addition to raising the criminal fine amounts to at least \$10,000 for all offenses listed in 40 CFR 70.11(a)(3)(ii), statutory revisions must provide authority for the imposition of those fines on a per day per violation basis, as required by 40 CFR 70.11(a)(3)(ii). Evidence of these statutory revisions and their procedurally correct adoption must be submitted to the EPA within 18 months of the EPA's interim approval of the New Mexico Operating Permits Program. This interim approval, which may not be renewed, extends until November 18, 1996. During this interim approval period, the State is protected from sanctions for failure to have a program, and the EPA is not obligated to promulgate a Federal operating

<sup>1</sup> EPA originally established a 30-day public comment period for the August 29, 1994 proposal. In response to several requests for extension, however, EPA agreed to allow an additional thirty days for public comments. See 59 FR 52122 (October 14, 1994).

<sup>2</sup> Section 502(d) requires, in relevant part, that "[n]ot later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part."

<sup>3</sup> At the present time, therefore, the EPA is not construing 40 CFR 70.7(e)(2)(i)(A)(3) and 70.7(e)(2)(i)(A)(5) to prohibit New Mexico from

allowing minor NSR changes to be processed as minor permit modifications.

<sup>4</sup> State programs with a narrower "title I modification" definition that are acted upon by EPA after an Agency decision that such a narrower definition is inappropriate would be considered deficient, but would be eligible for interim approval under revised 40 CFR 70.4(b).

permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

Requirements for approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also promulgating approval of the State's program under section 112(l)(5) and 40 CFR 63.91 for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations only applies to sources covered by the part 70 program.

The EPA's policy is to apply sanctions to State programs if the Governor fails to submit a corrected program within 18 months after the due date for the submittal. If the State fails to submit a corrected program for full approval by May 20, 1996, the EPA will start an 18-month clock for mandatory sanctions. If the State fails to submit a complete program before the expiration of the 18 month period, the EPA would impose sanctions. If the EPA disapproves a State's corrective program, and has not granted full approval within 18 months after the disapproval, then the EPA must impose mandatory sanctions. In both cases, if the State has not come into compliance within 6 months after EPA applies the first sanction, a second sanction is required. In addition, discretionary sanctions may be applied where warranted any time after the end of the interim approval period. If the EPA has not granted full approval to the State program by November 18, 1996, the EPA must promulgate, administer, and enforce a Federal operating permits program for the New Mexico Environment Department.

### III. Administrative Requirements

#### A. Docket

Copies of the State's submittal and other information relied upon for the final interim approval, including four public comments received during the public comment period and two received after the close of the public comment period, are contained in

docket number FR Doc. 94-12246, maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this final interim approval. The docket is available for public inspection at the location listed under the ADDRESSES section of this document.

#### B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

#### C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

#### List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: November 1, 1994.

Jane N. Saginaw,  
Regional Administrator (6A).

40 CFR part 70 is amended as follows:

#### PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Appendix A to part 70 is amended by adding the entry for New Mexico in alphabetical order to read as follows:

#### Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

\* \* \* \* \*

#### New Mexico

(a) Environment Department; submitted on November 15, 1993; Effective Date on December 19, 1994; Interim Approval Expires on December 19, 1996.

(b) [Reserved]

\* \* \* \* \*

[FR Doc. 94-28544 Filed 11-17-94; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 799

[OPPTS-42094C; FRL-4909-5]

RIN 2070-AB94

#### Testing Consent Order for Cyclohexane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Consent Agreement and Order.

**SUMMARY:** EPA has issued a Testing Consent Order (Order) that incorporates an Enforceable Consent Agreement (ECA) pursuant to the Toxic Substances Control Act (TSCA) with Chevron Chemical Company, CITGO Refining Chemicals, Inc., Sun Company, Inc., Kerr-McGee Refining Corporation, Huntsman Corporation, E.I. DuPont de Nemours Company, and Phillips Petroleum Company, (the Companies) who have agreed to perform certain health effects tests and an exposure evaluation test with cyclohexane (CAS No. 110-82-7). This document summarizes the ECA, and amends 40 CFR 799.5000 by adding cyclohexane to the list of chemical substances and mixtures subject to ECAs.

**EFFECTIVE DATE:** November 18, 1994.

**FOR FURTHER INFORMATION CONTACT:** Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** This document amends 40 CFR 799.5000 by adding cyclohexane to the list of chemical substances and mixtures subject to ECAs and export notification requirements.

#### I. Background

In its 17th Report to the Administrator of the Environmental Protection Agency, published in the Federal Register of November 19, 1985 (50 FR 47603), the Interagency Testing Committee (ITC) designated cyclohexane for priority testing consideration for certain health effects testing. The ITC recommended cyclohexane for testing for oncogenicity, reproductive toxicity, developmental toxicity, and neurotoxicity. The rationale for the original designation appeared in that Report. In the Federal Register of May 20, 1987 (52 FR 19096), EPA issued a proposed test rule for cyclohexane for health effects testing. EPA proposed cyclohexane be tested for subchronic toxicity, oncogenicity, reproductive toxicity, developmental

toxicity, neurotoxicity (schedule-controlled operant behavior, neuropathology, functional observation battery, and motor activity), developmental neurotoxicity, dermal absorption, and dermal sensitization.

On July 17, 1992, EPA published a notice in the *Federal Register* (57 FR 31714) declaring an "open season" for consent order negotiations for certain chemicals under testing consideration by EPA under section 4 of TSCA. These chemicals included cyclohexane. In a proposal dated September 15, 1992, the Cyclohexane Panel of the Chemical Manufacturers Association submitted a proposal for testing cyclohexane for potential health effects (Ref. 1). The Cyclohexane Panel's proposal included virtually all of EPA's proposed testing except for oncogenicity testing and developmental neurotoxicity. The Panel did not propose to do a developmental neurotoxicity test, believing it to be unwarranted due to data showing limited exposure. EPA disagrees with the Panel's ultimate conclusions on this testing and believes that such testing is supported by the exposure data. However, EPA also believes that this testing would best be considered after EPA receives and reviews the results of the neurotoxicity, reproductive and fertility tests required under the ECA described in this notice.

In accordance with 40 CFR 790.28, EPA issued an additional notice in the *Federal Register* of March 30, 1993 (58 FR 16669) announcing a public meeting and EPA's intent to negotiate with industry for a Testing Consent Order for cyclohexane based on the acceptance of

the Cyclohexane Panel's proposal as an adequate basis for negotiation. EPA published notices in the *Federal Register* of March 30, 1993 (58 FR 16669) and August 18, 1993 (58 FR 43893), requesting persons interested in participating in or monitoring testing negotiations on cyclohexane to contact EPA.

On February 17, 1994, EPA held a public meeting attended by representatives of interested parties. At the public meeting, the Cyclohexane Panel of CMA presented a proposed testing plan (Ref. 2) which would characterize the potential of cyclohexane's subchronic toxicity, reproductive toxicity, developmental toxicity, neurotoxicity (schedule-controlled operant behavior, neuropathology, functional observation battery, and motor activity), dermal absorption, and dermal sensitization. The Panel did not think that oncogenicity testing of cyclohexane was warranted at this time. EPA responded by noting the large emissions of cyclohexane reported on the Toxic Release Inventory (TRI). These emissions were reported by processors and users of cyclohexane, whereas the manufacturers reported relatively smaller releases. EPA requested that the manufacturers consider implementing, as part of their product stewardship activities, an emissions reduction program on cyclohexane targeted at their customers. In a letter dated March 17, 1994 (Ref. 3), CMA proposed language for an emissions reduction provision to be inserted into the ECA. In a letter dated April 14, 1994 (Ref. 4),

EPA responded by agreeing to defer oncogenicity testing pending prospective reductions in cyclohexane emissions. This provision provides that within 3 months after submission of the last study report required under the ECA, the Companies will submit a report to EPA summarizing the then current data on environmental releases of cyclohexane from facilities that manufacture, process or use cyclohexane. Upon reviewing the emissions data report submitted after completion of testing, as well as data from testing performed under this ECA, and other available exposure/emissions information, EPA may revisit the issue of the need for oncogenicity testing of cyclohexane.

## II. Exposure and Environmental Releases

Approximately 2.4 billion pounds of cyclohexane was produced in 1989. Over 95 percent of cyclohexane produced is used as an intermediate in nylon production. EPA's best estimate of the number of workers occupationally exposed to cyclohexane is 12,076. Cyclohexane is found in a number of consumer products including spray paint and spray adhesives and is also available as a laboratory solvent. Toxic Release Inventory data indicate that about 17.2 million pounds of cyclohexane was released to the environment in 1991.

## III. Scope of Testing Program

The Companies have agreed to complete the following testing,

TABLE—REQUIRED TESTING, TEST STANDARDS AND REPORTING REQUIREMENTS FOR CYCLOHEXANE

Test	Test standard (40 CFR citation)	Reporting deadline for final report <sup>1</sup> (months)	Interim reports (6 month) required
Health Effects.			
Subchronic: inhalation .....	40 CFR 798.2450	21	3
Reproductive effects.			
Inhalation .....	40 CFR 798.4700	29	4
Developmental toxicity.			
Inhalation .....	40 CFR 798.4350	15	2
Schedule-controlled operant behavior.			
Acute inhalation .....	1991 EPA Guideline	15	2
Functional observational battery.			
Subchronic inhalation .....	1991 EPA Guideline for neurotoxicity screening battery	21	3
Motor activity.			
Subchronic inhalation .....	1991 EPA Guideline for neurotoxicity screening battery	21	3
Neuropathology.			
Subchronic inhalation .....	1991 EPA Guideline for neurotoxicity screening battery	21	3
Dermal sensitization.			
Dermal .....	40 CFR 798.4100	12	1

TABLE—REQUIRED TESTING, TEST STANDARDS AND REPORTING REQUIREMENTS FOR CYCLOHEXANE—Continued

Test	Test standard (40 CFR citation)	Reporting deadline for final report <sup>1</sup> (months)	Interim reports (6 month) required
Dermal absorption test. Dermal and intravenous .....	Jeffcoat protocol	12	1

<sup>1</sup> Number of months after the effective date of the final rule.

In addition, the Companies have agreed that within 3 months following submission of the last study report required under this ECA, the Companies will submit a report to EPA summarizing the then current data on environmental releases of cyclohexane from facilities that manufacture, process or use cyclohexane.

#### IV. Export Notification

The issuance of the ECA and Order subjects any persons who export or intend to export the chemical substance, cyclohexane (CAS No. 110-82-7), of any purity, to the export notification requirements of section 12(b) of TSCA and the regulations promulgated pursuant to it at 40 CFR part 707. The listing of the chemical substance or mixture at 40 CFR 799.5000 serves as a notification to persons who intend to export such chemical substance or mixture that the substance or mixture is the subject of an ECA and Order and 40 CFR part 707 applies.

#### V. Withdrawal of Proposed Rule

EPA and the Companies have agreed that the cyclohexane testing requirements in the proposed rule will be met by implementing the Order and ECA, and the issuance of the Order and ECA by EPA constitutes final EPA action for purposes of 5 U.S.C. 704. Therefore, the proposed rule for cyclohexane, published at 52 FR 19026, May 20, 1987, is withdrawn. Any oncogenicity and developmental neurotoxicity testing requirements will be handled in separate actions.

#### VI. Rulemaking Record

EPA has established a record for this Consent Order under TSCA section 4, docket number OPPTS-42094C, which is available for inspection Monday through Friday, excluding legal holidays, in Rm. NE B607, 401 M St. SW., Washington, DC 20460 from 12 p.m. to 4 p.m. Confidential Business Information (CBI) while part of the record, is not available for public review. This record includes basic information considered by EPA in developing this ECA and Order and includes the following information:

(1) Testing Consent Order for Cyclohexane, with incorporated

Enforceable Consent Agreement and associated test standards attached as appendices.

(2) Federal Register notices pertaining to this notice and the Testing Consent Order incorporating the ECA and consisting of:

(a) Notice containing the ITC recommendation with intent to designate cyclohexane (50 FR 47603; November 19, 1985).

(b) Notice of Proposed Rulemaking, Cyclohexane (52 FR 19096, May 20, 1987).

(c) Notice of Opportunity to Initiate Negotiations for TSCA Section 4 Testing Consent Agreements (57 FR 31714, July 17, 1992).

(d) Notice of Testing Consent Agreement Development for Tier I Chemical Substances; Solicitation for Interested Parties (58 FR 16669, March 30, 1993).

(e) Notice of Testing Consent Agreement Development for Listed Chemical Substances; Solicitation for Interested Parties (58 FR 43893, August 18, 1993).

(3) Communications consisting of:

(a) Written letters.

(b) Contact reports of telephone summaries.

(c) Meeting summaries.

(4) Reports - published and unpublished factual materials.

#### B. References

(1) Chemical Manufacturers Association. Testing Proposal of the Cyclohexane Panel of the Chemical Manufacturers Association. September 15, 1992.

(2) Chemical Manufacturers Association. Letter to John Harris of EPA dated February 16, 1994.

(3) Chemical Manufacturers Association. Letter to Charles Auer of EPA dated March 17, 1994.

(4) EPA. Letter to Jonathon Busch of the Chemical Manufacturers Association dated April 14, 1994.

#### VII. Regulatory Assessment Requirements

##### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of

Management and Budget (OMB)). Under section 3(f), the order defines "significant regulatory action" as action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

OMB has exempted this regulatory action from E.O. 12866 review because it is a consent agreement.

##### B. Paperwork Reduction

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this Order under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070-0033.

Public reporting burden for this collection of information is estimated to average 586 hours per response. The estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the collection of information.

##### List of Subjects in 40 CFR Part 799

Chemicals, Chemical export, Environmental protection, Hazardous substances, Health effects, Laboratories, Reporting and recordkeeping requirements, Testing.

Dated: November 3, 1994.

Lynn R. Goldman,  
Assistant Administrator for Prevention,  
Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, subchapter R, part 799 is amended as follows:

## PART 799—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by adding cyclohexane to the table in CAS Number order, to read as follows:

§799.5000 Testing Consent Orders for Substances and Mixtures with Chemical Abstract Service Registry Numbers.

CAS Number	Substance or mixture name	Testing	FR Publication Date
110-82-7	Cyclohexane	Health Effects and Environmental Releases Report	November 18, 1994

[FR Doc. 94-28552 Filed 11-17-94; 8:45 am]  
BILLING CODE 6560-50-F

INTERSTATE COMMERCE  
COMMISSION

## 49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 32)]

Rail General Exemption Authority;  
Exemption of Carbon Dioxide

AGENCY: Interstate Commerce  
Commission.

ACTION: Final rule.

**SUMMARY:** Pursuant to its authority under 49 U.S.C. 10505, the Commission is exempting from regulation the transportation by rail of carbon dioxide (STCC No. 28-133). This commodity is added to the list of exempt commodities in 49 CFR Part 1039, as set forth below.

**EFFECTIVE DATE:** December 18, 1994.

**FOR FURTHER INFORMATION CONTACT:**

Joseph H. Dettmar, (202) 927-5660.  
[TDD for hearing impaired: (202) 927-5721.]

**SUPPLEMENTARY INFORMATION:**

For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, 1201

Constitution Ave. NW., Washington, DC 20423. Telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services, (202) 927-5721.]

On October 21, 1993, at 58 FR 54323, we requested comments on a proposal by the Association of American Railroads (AAR) to exempt from regulation the railroad transportation of carbon dioxide. After receiving and analyzing the comments filed in this proceeding, we now approve AAR's proposal.

We reaffirm our initial finding that the exemption will not significantly affect either the quality of the human environment or the conservation of energy resources.

We also reaffirm our initial finding that the exemption will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 49 CFR Part 1039**

Intermodal transportation,  
Manufactured commodities, Railroads.

Decided: September 22, 1994.

By the Commission, Chairman McDonald,  
Vice Chairman Phillips, and Commissioners  
Simmons and Morgan.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1039

of the Code of Federal Regulations is amended as follows:

## PART 1039—EXEMPTIONS

1. The authority citation for part 1039 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10505; and 5 U.S.C. 553.

2. In § 1039.11, the table in paragraph (a) is amended by adding the following new entry to STCC Tariff 6001-V:

§ 1039.11 Miscellaneous commodities  
exemptions.

(a) \* \* \*

STCC No.	STCC Tariff 6001-V eff. 1-1- 94	Commodity
28 133	.....do	Carbon dioxide.

[FR Doc. 94-28520 Filed 11-17-94; 8:45 am]

BILLING CODE 7035-01-P

# Proposed Rules

Federal Register

Vol. 59, No. 222

Friday, November 18, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Airspace Docket No. 94-AWP-22]

#### Proposed Modification of Class E airspace; Arcata, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to modify Class E airspace at Arcata, CA. An Instrument Landing System/Distance Measuring Equipment (ILS/DME) standard instrument approach procedure (SIAP) has been developed for the Arcata Municipal Airport. Controlled airspace extending from 700 feet above the surface is needed for aircraft executing the ILS approach. The intended effect of the proposal is to provide adequate Class E airspace for instrument flight rules (IFR) operations at Arcata Municipal Airport.

**DATES:** Comments must be received on or before December 30, 1994.

**ADDRESSES:** Send comments on the proposal in triplicate to Manager, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, Docket No. 94-AWP-22, 15000 Aviation Boulevard, Lawndale, California, 90261. The official docket may be examined in the Office of the Assistant Chief Counsel for the Western-Pacific Region at the same address. An informal docket may also be examined during normal business hours in the Office of the Manager, System Management branch, Air Traffic Division, at the address shown above.

**FOR FURTHER INFORMATION CONTACT:** Scott Speer, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California, 90261, telephone (310) 297-0010.

## SUPPLEMENTARY INFORMATION:

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-AWP-22." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedures.

## The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Arcata, CA. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the ILS/DME approach at Arcata, CA. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as transition areas for airports are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 10034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

### PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E. O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, *Airspace Designations and Reporting Points*, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

\* \* \* \* \*

**AWP CA E5 Arcata, CA—[Revised]**

Arcata Airport, CA

(lat. 40°58'41"N, long. 124°06'31"W)

Arcata VOR/DME (lat. 40°58'53"N, long. 124°06'30"W)

Abeta NDB (lat. 40°57'53"N, long. 124°05'55"W)

Fortuna VORTAC (lat. 40°40'17"N, long. 124°14'04"W)

That airspace extending upward from 700 feet above the surface within that airspace beginning at lat. 40°29'00"N, long. 124°07'00"W.; to lat. 40°45'00"N, long. 123°50'00"W.; to lat. 41°05'00"N, long. 124°05'00"W.; to lat. 41°03'00"N, long. 124°19'00"W.; to lat. 40°36'00"N, long. 124°19'00"W., thence to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 41°15'59"N, on the east by a line 7.8 miles northeast of and parallel to the 333° and 153° bearings from the Abeta NDB to lat. 40°39'29"N, long. 123°42'24"W.; to lat. 40°25'01"N, long. 123°49'16"W., to intercept the 24.3-mile arc southeast of the Fortuna VORTAC, thence clockwise via the Fortuna 24.3-mile arc to the eastern edge of V-27; to lat. 40°21'59"N, long. 124°12'04"W.; to lat. 40°21'59"N, long. 124°30'04"W., on the west by long. 124°30'04"W., and that airspace within 7.8 miles each side of the Fortuna VORTAC 110° radial, extending from the VORTAC to 53 miles east of the VORTAC.

\* \* \* \* \*

Issued in Los Angeles, California, on November 3, 1994.

Dennis T Koehler,

Acting Manager, Air Traffic Division Western-Pacific Region.

[FR Doc. 94-28530 Filed 11-17-94; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

[Airspace Docket No. 94-AGL-28]

**Proposed establishment of Class E Airspace; Chamberlain, SD, Chamberlain Municipal Airport**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Chamberlain, SD. A Global Positioning System (GPS) standard instrument

approach procedure (SIAP) to Runway 31 has been developed for the Chamberlain Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed for aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before December 29, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 94-AGL-28, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Griffith, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7568.

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the addressed listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 94-AGL-28." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified

closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination on the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date of comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Chamberlain, SD; this proposal would provide adequate Class E airspace for IFR operators executing the GPS Runway 31 SIAP at Chamberlain Municipal Airport. Controlled airspace extending from 700 to 1200 feet AGL is needed for aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area which would enable pilots to a circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical

regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

\* \* \* \* \*

#### AGL SD E5 Chamberlain, SD—[New]

(lat. 43°45'54" N, long. 99°19'14" W)

That airspace extending upward from 700 feet above the surface within a 6.3 mile radius of the Chamberlain Municipal Airport.

\* \* \* \* \*

Issued in Des Plaines, Illinois on November 3, 1994.

**Roger Wall,**

*Manager, Air Traffic Division.*

[FR Doc. 94–28528 Filed 11–17–94; 8:45 am]

BILLING CODE 4910–13–M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 309

RIN 3084-AA57

### Labeling Requirements for Alternative Fuels and Alternative Fueled Vehicles

**AGENCY:** Federal Trade Commission.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** Section 406(a) of the Energy Policy Act of 1992 ("EPA 92") directs the Federal Trade Commission ("Commission") to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and alternative fueled vehicles. On May 9, 1994, the Commission published a notice of proposed rulemaking in the Federal Register announcing the substance of proposed labeling requirements and sought written comment on its proposal. In this notice the Commission announces modifications to that initial labeling proposal and the specific language of a proposed labeling rule. The Commission invites interested persons to submit written comments addressing any issue they believe may bear upon the proposed rule.

**DATES:** Written comments must be submitted on or before December 19, 1994.

**ADDRESSES:** Written comments should be sent to the Division of Enforcement, Federal Trade Commission, 601 Pennsylvania Avenue, NW., Washington, DC 20580, Attn: Jeffrey E. Feinstein, room S-4618. The Commission requests that original submissions be filed with six copies, if feasible. Submissions should be identified as "16 CFR Part 309—SNPR Comment." If submissions are made by facsimile transmission, please call 202/326-2372 to confirm receipt.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey E. Feinstein, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580, telephone 202/326-2372.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

EPA 92<sup>1</sup> establishes a comprehensive national energy strategy designed to increase U.S. energy security and improve the economy in cost effective and environmentally beneficial ways.<sup>2</sup> It seeks to reduce U.S. dependence on oil imports; promote energy efficiency;

reduce the use of petroleum-based fuels in motor vehicles; and provide new energy options. Key programs in titles III, IV, V, and VI of EPA 92 promote the development of alternative fuels<sup>3</sup> and alternative fueled vehicles ("AFVs").<sup>4</sup>

Two provisions in title IV of EPA 92 require that information on alternative fuels and AFVs be made available to "consumers" (a term not defined in EPA 92). In one provision, section 406(a) of EPA 92 directs the Commission to issue a rule establishing uniform labeling requirements, to the greatest extent practicable, for alternative fuels and alternative fueled vehicles.<sup>5</sup> The Act does not specify what information should be displayed on these labels. Instead, it provides generally that the rule must require disclosure of "appropriate," "useful," and "timely" cost and benefit information on "simple" labels.<sup>6</sup> The purpose of the labeling requirements is to enable consumers to make reasonable choices and comparisons. In formulating the rule, the Commission must consider the problems associated with developing and publishing the required information, taking into account lead time, costs, frequency of changes in costs and benefits that may occur, and other relevant factors. Where appropriate, the labels required by section 406(a) are to be consolidated with other labels providing information to consumers. EPA 92 requires the Commission to update its labeling requirements "periodically to reflect the most recent available information."<sup>7</sup>

A second and complementary provision directs the Secretary of the Department of Energy ("DOE") to develop an information package for consumers.<sup>8</sup> Specifically, section 405 of

<sup>1</sup> "Alternative fuels" are defined as:

"[M]ethanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary [of Energy], by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal-derived liquid fuels; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits[.]"

42 U.S.C. 13211(2) (Supp. IV 1993).

<sup>4</sup> An "alternative fueled vehicle" is "a dedicated vehicle or a dual fueled vehicle[.]" 42 U.S.C. 13211(3). Each term is further defined in 42 U.S.C. 13211 (6) and (8).

<sup>5</sup> Section 406(a) is codified at 42 U.S.C. 13232(a) (Supp. IV 1993).

<sup>6</sup> 42 U.S.C. 13232(a).

<sup>7</sup> *Id.*

<sup>8</sup> 42 U.S.C. 13231. DOE is also required to provide technical assistance to the Commission in

<sup>1</sup> Pub. L. 102–486, 106 Stat. 2776 (1992).

<sup>2</sup> H. Rep. No. 102–474(I), 102d Cong., 2d Sess. 132, reprinted in 1992 U.S.C.A.N. at 1954, 1955.

EPA 92 requires DOE to produce and make available an information package for consumers to help them choose among alternative fuels and AFVs.<sup>9</sup> DOE's information package must provide "relevant and objective" information addressing seven "motor vehicle and fuel characteristics as compared to gasoline" (including environmental performance, energy efficiency, domestic content, cost, maintenance requirements, reliability, and safety), information about the conversion of conventional motor vehicles to AFVs, and "such other information as the Secretary [of DOE] determines is reasonable and necessary to help promote the use of alternative fuels in motor vehicles."<sup>10</sup>

This is the Commission's second rulemaking concerning labeling requirements for alternative fuels. In a separate proceeding also required by EPA 92,<sup>11</sup> the Commission recently extended the requirements of its former Octane Rule<sup>12</sup> (renamed the "Fuel Rating Rule") beyond gasoline to include liquid alternative fuels.<sup>13</sup> As a result, retailers of such fuels are now required, among other things, to post labels identifying the commonly used name of the fuel and the amount, expressed as a minimum percentage by volume, of the fuel's principal component.<sup>14</sup>

The Commission seeks written comment on whether the proposed rule, as described in this supplemental notice, will accomplish the purposes of section 406(a). The Commission also seeks comment on whether some

variation of this proposal, or other options or variations not proposed here, would be more appropriate.

## II. Public Participation

EPA 92 requires the Commission, in formulating its labeling requirements, to obtain the views of affected industries, consumer organizations, Federal and State agencies, and all other interested parties.<sup>15</sup> It also required the Commission to issue a Notice of Proposed Rulemaking ("NPR") in consultation with DOE, the Administrator of the Environmental Protection Agency ("EPA"), and the Secretary of the Department of Transportation ("DOT") within eighteen months of the statute's enactment date (i.e., October 24, 1992).<sup>16</sup> To comply with those requirements, the Commission received information from the public relating to this proceeding from four sources: written comments filed in response to an Advanced Notice of Proposed Rulemaking ("ANPR") published on December 10, 1993,<sup>17</sup> written comments filed in response to an NPR published on May 9, 1994,<sup>18</sup> testimony during a Public Workshop-Conference ("Workshop") held on July 20, 1994, and supplemental comments filed after the Workshop. All such information (i.e., the comments and Workshop transcript) was placed on the public record of this proceeding. The discussion below includes information from all four sources, as well as documents placed on the public record by the Commission's staff.<sup>19</sup> The Commission considered all these materials in developing this revised labeling proposal.

### A. The Commission's ANPR

In its ANPR, the Commission sought written comment on basic issues raised

by section 406(a)'s mandate.

Accordingly, it requested comment on issues relating to which fuels and vehicles should be covered by the labeling requirements (i.e., the proposed rule's scope), and what information should be required to be displayed on labels (i.e., the proposed rule's disclosures).<sup>20</sup> The Commission also sought comment on how the labeling requirements should be updated, and the extent to which the labels should be consolidated with other labels providing information to consumers. In response, the Commission received 28 written comments addressing these issues. The comments were summarized in the Commission's NPR.<sup>21</sup>

### B. The Commission's NPR

The Commission considered written comments responding to the ANPR in developing its initial labeling proposal, which was published in the *Federal Register* as the Commission's NPR. The NPR announced the substance of proposed labeling requirements and a proposed rule implementing section 406(a)'s mandate. In that NPR, the Commission invited interested persons to submit written comments until June 23, 1994, on any issue of fact, law or policy that might have bearing upon the proposed labeling requirements. As described below, 37 commenters (representing vehicle manufacturers,<sup>22</sup> fuel producers,<sup>23</sup> governmental entities,<sup>24</sup> consumer organizations,<sup>25</sup> and other interested organizations<sup>26</sup>) responded to the NPR.

<sup>20</sup> 58 FR 64914, 64915.

<sup>21</sup> 59 FR 24015-24017.

<sup>22</sup> Chrysler Corporation ("Chrysler"), G-13; The Flexible Corporation ("Flexible"), G-12; Ford Motor Company ("Ford"), G-14; General Motors ("GM"), G-8; Thomas Built Buses, Inc. ("Thomas BB"), G-10.

<sup>23</sup> Boston Edison Company ("Boston Edison"), G-26; Mobil Oil Corporation ("Mobil"), G-2; Phillips 66 Company ("Phillips 66"), G-15; Sun Company, Inc. ("Sun"), G-1; Unocal Corporation ("Unocal"), G-9.

<sup>24</sup> California Energy Commission ("CEC"), H-8; Montgomery County, Maryland, Office of Consumer Affairs ("MC-MD"), H-7; Nebraska Alternative Fuels Advisory Committee ("Nebraska EO"), H-9; Tennessee Valley Corporation ("TVA"), H-5; Texas Railroad Commission ("Texas RRC"), H-3; U.S. Department of Energy ("DOE"), H-10; U.S. Department of Energy, Energy Information Administration, Energy End Use and Integrated Statistics Division ("EIA/EEU-ISD"), H-2; U.S. Department of Transportation, National Highway Traffic Safety Administration ("DOT/NHTSA"), H-1; U.S. Environmental Protection Agency ("EPA"), H-4.

<sup>25</sup> Center for Auto Safety ("CAS"), G-17; Greenpeace, Inc. ("Greenpeace"), G-27; Union of Concerned Scientists ("UCS"), G-16.

<sup>26</sup> American Automobile Manufacturers Association ("AAMA"), G-7; American Gas Association and Natural Gas Vehicles Coalition ("AGA/NGVC"), G-6; American Methanol Institute

Continued

developing labeling requirements, and coordinate such technical assistance with its development of a consumer information package. 42 U.S.C. 13232(b).

<sup>9</sup> *Id.* The information package required by this section was intended "to enable [consumers] to understand and to help them choose among alternative fuels and AFVs." H. Rep. No. 102-474(I), 102d Cong., 2d Sess. 185, reprinted in 1992 U.S.C.A.N. at 1954, 2008.

<sup>10</sup> 42 U.S.C. 13232(b). EPA 92 also directs the DOE Secretary to create an additional public education program targeted specifically to the Federal government. Under that mandate, the DOE Secretary, "in cooperation with the Administrator of General Services," must "promote programs and educate officials and employees of Federal agencies on the merits of AFVs." 42 U.S.C. 13214(a). That section further requires that the DOE Secretary "shall provide and disseminate information to Federal agencies on," *inter alia*, "the range and performance capabilities of [AFVs]." *Id.*

<sup>11</sup> 15 U.S.C. 2821-2823.

<sup>12</sup> Octane Posting and Certification, 16 CFR Part 306.

<sup>13</sup> 16 CFR 306.0(i)(2) (1994). In that proceeding, the Commission had no authority to extend its requirements beyond liquid alternative fuels. 15 U.S.C. 2821 (Supp. IV 1993).

<sup>14</sup> 16 CFR 306.0(j)(2) (1994). The Fuel Rating Rule became effective October 25, 1993. 58 FR 41356, 41356, Aug. 3, 1993.

<sup>15</sup> 42 U.S.C. 13232(a).

<sup>16</sup> *Id.* During its development of this supplemental notice, Commission staff discussed the proposed labeling requirements with staff from DOE, EPA, and DOT's National Highway Traffic Safety Administration.

<sup>17</sup> 58 FR 64914.

<sup>18</sup> 59 FR 24014.

<sup>19</sup> Commission's Rulemaking Record No. R311002. Comments are coded either "G" (indicating that they were filed by nongovernmental parties) or "H" (indicating that they were filed by governmental agencies). The Workshop transcript is filed in category "L." Information placed on the public record by Commission staff is coded "B." In this SNPR, comments are cited by identifying the commenter, by name, the comment number, and the relevant page number(s), e.g., "ETC, G-24, 1-3." Supplemental comments are designated as (Supp.), e.g., "RFA (Supp.), G-5, 1." Discussion in the Workshop is cited by identifying the party, a reference to the transcript, and the relevant page number(s), e.g., "EPA (Tr.), 184." Staff submissions are cited by identifying the document number, relevant page number(s), and document date, e.g., "B-13, 3, Jan. 25, 1994."

### C. Public Workshop-Conference

The Commission announced in the NPR that its staff would conduct a Workshop to afford staff and interested parties an opportunity to discuss issues raised in the rulemaking proceeding.<sup>27</sup> The Workshop was not intended to achieve a consensus of opinion among participants or between participants and Commission staff with respect to any issue. Instead, its purpose was to examine publicly areas of significant controversy or divergent opinions that were raised in the written comments. Persons interested in participating in the Workshop were required to notify Commission staff by June 8, 1994, and file a written comment by the comment due date (i.e., June 23, 1994).

Twenty-one interested parties submitted written requests to participate in the Workshop.<sup>28</sup> Twenty of those parties filed written comments as required,<sup>29</sup> and all twenty were invited to participate. Two parties (Chrysler and Greenpeace) subsequently elected not to attend, and, as a result, individuals representing eighteen interested parties participated at the Workshop.<sup>30</sup> The

("AMI"), G-4; American Petroleum Institute ("API"), G-25; Bill of Rights Association ("BOR"), G-4; Electric Transportation Coalition ("ETC"), G-24; Engine Manufacturers Association ("EMA"), G-21; National Association of Consumer Agency Administrators ("NACAA"), H-6; National Association of Fleet Administrators ("NAFA"), G-20; National Automobile Dealers Association ("NADA"), G-19; National Propane Gas Association ("NPGA"), G-18; Propane Consumers Coalition ("PCC"), G-22; Renewable Fuels Association ("RFA"), G-5; Society of Independent Gasoline Marketers of America ("SIGMA"), G-23; Texas Automobile Dealers Association ("Texas ADA"), G-11.

<sup>27</sup> 59 FR 24014, 24020.

<sup>28</sup> AAMA, A-2 (on behalf of AAMA, Chrysler, Ford, and GM); AGA/NGVC, A-8; AMI, A-10; API, A-12; Boston Edison, A-16; CAS, A-14; DOE, A-1; Eckert Seamans Cherin & Mellott, A-17 (on behalf of unidentified clients in the automotive industry); EMA, A-3 (request submitted by Neal Gerber & Eisenberg); ETC, A-11 (request submitted by Van Ness Feldman); EPA, A-9; Flexible, A-6; Greenpeace, A-18; NACAA, A-7; NAFA, A-13 (request submitted by Kent & O'Connor, Inc.); NPGA, A-5 (on behalf of NPGA and Phillips 66); RFA, A-4 (request submitted by Downstream Alternatives, Inc.); UCS, A-15.

<sup>29</sup> The law firm Eckert Seamans Cherin & Mellott did not file a written comment.

<sup>30</sup> Lois E. Bennett, GM; Timothy D. Davis, Columbia Gas (representing AGA/NGVC); Robert Graham and Peter Morman, CAS; Marcel L. Halberstadt, AAMA; Nancy L. Homeister, Ford; Evan W. Johnson, MC-MD (representing NACAA); Martin S. Karl, Boston Edison; Allen R. Larson, Esq., Larson and Curry (representing Boston Edison); Paul McArdle, DOE; Denise McCourt, API; Patrick O'Connor, Kent & O'Connor (representing NAFA); Larry D. Osgood, Phillips 66 Propane Company (representing NPGA); Robert E. Reynolds, Downstream Alternatives, Inc. (representing RFA); Glyn Short, AMI; Lisa A. Stegink, Esq., Neal Gerber & Eisenberg (representing EMA); Jaime C. Steve, UCS; Lance Watt, Flexible; Ellen S. Young, Esq., Van Ness Feldman (representing ETC); Kenneth L.

Workshop was held on July 20, 1994, at the Commission's headquarters and was conducted as announced in the NPR.<sup>31</sup>

### D. Post-Workshop Comments and SNPR

In its NPR, the Commission announced that Workshop participants would be permitted one week to file supplemental written comments addressing concerns raised during the Workshop.<sup>32</sup> Eight participants elected to file such comments.<sup>33</sup> The Commission also announced that after reviewing written comments received in response to the NPR, the Workshop transcript, and the post-Workshop comments, it would publish an SNPR. The SNPR would propose the text of a labeling rule and allow the public an opportunity to comment on the revised labeling proposal.

### III. Supplemental Proposed Labeling Rule

#### A. Comment Suggestions Beyond Commission's Authority Under EPA 92

As noted previously, section 406(a) directs the Commission to establish labeling requirements for alternative fuels and AFVs disclosing cost and benefit information. Because this rulemaking proceeding is mandated by statute, the Commission's authority is limited to what is authorized by EPA 92. Several NPR commenters, however, suggested regulatory options that involve matters other than labeling requirements, alternative fuels or AFVs, and cost and benefit information (i.e., they involve matters beyond section 406(a)'s statutory language). To the extent that these commenters suggested labeling requirements beyond that authorized by section 406(a), the Commission has tentatively concluded that it has no authority to propose them.

For example, several commenters suggested that the Commission require AFV dealers to have copies of the DOE brochure available for consumer inspection and use.<sup>34</sup> These commenters

Zerafa, EPA. Philip J. Harter, Esq., served as the Workshop's moderator.

<sup>31</sup> The NPR announced that the Workshop would take place over two days, but the participants concluded discussing the agenda staff had prepared in one day. As a result, the Workshop's second day was cancelled. (Tr.), 238.

<sup>32</sup> 59 FR 24014, 24023.

<sup>33</sup> AAMA, AGA/NGVC, Boston Edison, CAS, EMA, Flexible, NPGA, and RFA.

<sup>34</sup> ETC, G-24, 6; NAFA, G-20, 3-5; NPGA (Tr.), 188-89. CAS suggested that the Commission require AFV dealers and conversion companies to provide copies of the DOE package to consumers, and that consumers acknowledge receipt by signing a designated sales document. CAS, G-17, 7; (Tr.), 174; (Supp.), G-17, 4. CAS also proposed that the AFV label advise consumers that a free copy of the DOE brochure is available from the dealer. CAS (Supp.), G-17, 4. ETC also suggested, however, that

believed that the Commission could model such a requirement on an existing EPA regulation directing automobile dealers to make available free copies of EPA's Gas Mileage Guide (a booklet comparing the fuel economy of similarly-sized new automobiles).<sup>35</sup> The Commission believes, however, that such a requirement does not appear to be reasonably within section 406(a)'s scope, which is limited to uniform labeling requirements. In any event, the Commission notes that EPA's regulation was promulgated pursuant to a specific congressional directive that EPA require dealers to provide such information to consumers.<sup>36</sup> In the absence of a similar congressional directive, the Commission believes that such a requirement may be beyond its authority under EPA 92.<sup>37</sup>

For similar reasons, the Commission has also tentatively concluded that requiring any of the following may exceed its authority under EPA 92: (1) Labeling for conventional fueled vehicles;<sup>38</sup> (2) that information on AFV labels be provided to consumers at the time an AFV is offered for sale;<sup>39</sup> and (3) that "all pertinent information" (e.g., fuel hazards, tank capacity, refueling or recharging time, and cruising range) be disclosed in vehicle owners' manuals.<sup>40</sup>

#### B. Labeling Requirements for Alternative Fuels

##### 1. Scope of the Labeling Requirements for Alternative Fuels

a. *Proposed scope of the rule.* As noted previously, section 406(a) of EPA

dealers would find it in their interest to have the DOE brochures available to consumers. ETC (Tr.), 168.

<sup>35</sup> 40 CFR 600.401-77 to 600.407-77 (1993).

<sup>36</sup> See 15 U.S.C. 2006(b)(2) ("The EPA Administrator \* \* \* shall prescribe rules requiring dealers to make available to prospective purchasers [fuel economy information] compiled by the EPA Administrator under paragraph (1).").

<sup>37</sup> The Commission notes, however, that a DOE official at the Workshop stated that DOE would consider distributing copies of the information package to AFV dealerships. DOE (Tr.), 227-28.

<sup>38</sup> AGA/NGVC, G-6, 11 (requiring disclosures only for AFVs could unnecessarily raise consumer concerns about these products).

<sup>39</sup> NAFA, G-20, 2 ("For example, when a representative of a conversion company meets with a consumer to offer to convert a vehicle, the representative would provide the consumer with the appropriate information in a format similar to the vehicle label."). NAFA based this suggestion on its concern that consumers would not always be able to inspect labels prior to acquisition. *Id.*

<sup>40</sup> NACAA, H-6, 2. The Commission also believes that one suggestion (that it develop an information bulletin discussing pertinent considerations), while not beyond its authority, may not be necessary because of DOE's mandate to complete the same task. CEC, H-8, 1-2, 6; NAFA, G-20, 3. Traditionally, however, the Commission issues consumer education materials after new rules are issued, and that will be considered when this proceeding is completed.

92, in part, requires the Commission to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels. The NPR proposed fuel labeling requirements for three non-liquid fuels, compressed natural gas ("CNG"), gaseous hydrogen gas ("hydrogen") and electricity.<sup>41</sup> Section 406(a) also directs the Commission to consider labeling requirements for liquid "alternative fuels." The Commission's Fuel Rating Rule, however, contains labeling requirements for liquid alternative fuels that are similar to the labeling requirements proposed in the SNPR for non-liquid alternative fuels. The Fuel Rating Rule's labeling requirements cover only liquid alternative fuels. Although that rule serves a somewhat different purpose,<sup>42</sup> the Commission stated in the NPR that harmonizing labeling requirements, when practicable, is appropriate. The Commission's NPR proposal has the effect of imposing the same labeling requirements on both liquid and non-liquid alternative fuels.

Nine commenters addressed the scope of the Commission's proposals in the NPR. All of the commenters supported limiting the scope of this proceeding to non-liquid alternative fuels because the Commission's proposal, if adopted, would impose equal, fuel-neutral labeling requirements on all alternative fuels.<sup>43</sup> No commenters specifically recommended that the Commission include in this proceeding alternative fuels other than the three the Commission identified.

Based on the comments received, and the existing similar requirements imposed by the Commission's Fuel

Rating Rule for liquid alternative fuels, the Commission proposes limiting this proposed rule to the non-liquid alternative fuels CNG, hydrogen and electricity. The Commission's proposal, if adopted, would result in equal, uniform, fuel-neutral labeling requirements for all alternative fuels.<sup>44</sup> In accordance with section 406(a)'s directive to review the rule "periodically to reflect the most recent available information,"<sup>45</sup> the Commission will supplement the list of covered fuels as DOE designates new non-liquid fuels as alternative fuels.

*b. Description of alternative fuels proposed to be covered in the final rule—(1) Compressed natural gas*

Natural gas is used as a vehicle fuel mainly in the form of CNG, although it also may be used as liquefied natural gas ("LNG"). CNG is used as an automotive fuel in spark ignition engines, and is stored at a pressure up to 220 atmospheres in heavy, rather bulky cylinders, which limits its storage capacity in a vehicle.<sup>46</sup>

Natural gas consists mainly of methane, and is widely available in many parts of the world. Methane-rich gas also is made by the anaerobic decomposition of animal waste and vegetable matter (biogas). Gas composition is important to natural gas vehicle users because large amounts of non-methane hydrocarbons will enrich the fuel mixture, reduce the octane number, lead to increased hydrocarbon emissions, and increase the potential for engine knock. These variables require that engine parameters, such as air to fuel mixture and ignition timing, be adjusted on the basis of the composition of the local natural gas supply.<sup>47</sup> Natural gas composition varies throughout the country, depending on original composition and processing. Pipeline quality natural gas is composed of several different gases, with methane typically accounting for 85 percent to 99 percent, with other hydrocarbons such as ethane, propane, some butanes, and nitrogen, helium, carbon dioxide, and trace amounts of hydrogen sulfide,

water, and odorants making up the remainder.<sup>48</sup>

The heating value of CNG (i.e., its energy content) is significantly lower than that of gasoline.<sup>49</sup> But, CNG has excellent octane properties so that vehicles can use high compression ratios when CNG is the sole fuel. This gives improved combustion efficiency.<sup>50</sup>

CNG refueling transfers natural gas under pressure and may be set up as either slow-fill or fast-fill. Slow-fill generally uses over-night refueling and requires less costly refueling station equipment than fast-fill. Fast-fill refueling time is only slightly longer than gasoline refueling time.<sup>51</sup>

(2) *Hydrogen gas.* Hydrogen gas can be produced by electrolysis of water or from natural gas or coal.<sup>52</sup> Hydrogen may be used in an internal combustion engine ("ICE") as a gaseous fuel similar

<sup>48</sup> *Id.*, at 16. See also Standards for Emissions from Emissions From Natural Gas-Fueled, and Liquefied Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversions ("Gaseous Fuels Rule"), 59 FR 48472, 48484 (1994) (given wide range of natural gas compositions currently available, EPA proposed very broad specifications for natural gas certification fuel, which included a range for methane content of 74 to 98.5 percent, as well as broad ranges for several other parameters); Society of Automotive Engineers, "Recommended Practice for Compressed Natural Gas Vehicle Fuel," SAE J1616 (1994), B-40, 1 (natural gas is comprised chiefly of methane, generally 88 to 96 molecular ("mole") percent); Automotive Fuels Handbook, B-34, 454 (composition of natural gas somewhat variable, depending on gas field or biological feedstocks from which it is produced; impurities include higher hydrocarbons, the heavier of which usually are removed as condensate, nitrogen, carbon dioxide, oxygen, and particularly in biogas, hydrogen sulfide); Compressed Natural Gas Measurement Issues, by C.F. Blazek, J.A. Kinast and P. Freeman, Institute of Gas Technology (1993), B-50, 5 (natural gas varies in composition by location and seasonally); Natural Gas as a Stationary Engine and Vehicular Fuel, by William E. Liss and William H. Thrasher, SAE Technical Paper 912364 (1991), B-51, 44 (natural gas exhibits widely varying composition which is controlled through processing and separation steps); Alternatives to Traditional Transportation Fuels An Overview, Energy Information Administration, DOE/EIA-0585/O (1994), B-52, 52 (the variability in the composition of natural gas can affect its performance as a transportation fuel); Variability of Natural Gas Composition in Select Major Metropolitan Areas of the United States, by W.E. Liss, W.H. Thrasher, G.F. Steinmetz, P. Chowdhry, and A. Attari, Gas Research Institute Report No. GRI-92/0123 (1992), B-53, 14 (indicating that the methane content of natural gas can vary from 74.5 percent to 98.1 percent).

<sup>49</sup> Automotive Fuels Handbook, B-34, 454-55.

<sup>50</sup> *Id.*, at 455 (both research octane number and motor octane number about 120). See also Introduction to Alternative Fuel Vehicles, B-35, 19 (research octane rating is about 130). The fairly high research octane rating of natural gas makes it relatively resistant to engine knock. The anti-knock property is a result of the high ignition temperature, resistance to "autoignition," and the relatively low flame speed of natural gas. *Id.*

<sup>51</sup> Introduction to Alternative Fuel Vehicles, B-35, 17.

<sup>52</sup> Automotive Fuels Handbook, B-34, 458.

<sup>41</sup> These are the only non-liquid fuels defined as "alternative fuels" in EPA 92. 42 U.S.C. 13211(2) (Supp. IV 1993).

<sup>42</sup> The purpose of the EPA 92 amendments to Title II of the Petroleum Marketing Practices Act, 15 U.S.C. 2821-2825, was to give purchasers information they need to choose the correct type or grade of fuel for their vehicles. 58 FR 41356.

<sup>43</sup> API, G-25, 1-3 (supports expanding the Fuel Rating Rule's requirements to non-liquid alternative fuels to encourage a fuel-neutral regulatory scheme); CEC, H-8, 1-6 (supports proposal because it would result in consistent labeling of all alternative fuels); Mobil, G-2, 1-3 (supports proposal because it is consistent with Fuel Rating Rule); NAFA, G-20, 1 (endorses proposal because it would result in uniform labeling requirements for all alternative fuels); NPGA, G-18, 2-3 (extremely important all alternative fuels be subject to essentially identical requirements); Phillips 66, G-15, 1 (recommends Fuel Rating Rule's labeling requirements be extended to non-liquid alternative fuels); RFA (Supp.), G-5, 1 (supports extension of current labeling requirements for liquid alternative fuels under the Fuel Rating Rule to gaseous alternative fuels); SIGMA, G-23, 1 (generally supports the Commission's entire proposal with respect to fuel labeling, including its scope); Sun, G-1, 1 (favors proposal because it places equal labeling requirements on all competing fuels).

<sup>44</sup> See API, G-25, 1-3; CEC, H-8, 1-6; Mobil, G-2, 1-3; NAFA, G-20, 1; NPGA, G-18, 2-3; Phillips 66, G-15, 1; RFA (Supp.), G-5, 1; SIGMA, G-23, 1; Sun, G-1, 1.

<sup>45</sup> 42 U.S.C. 13232(a) (Supp. IV 1993).

<sup>46</sup> "Automotive Fuels Handbook" (1990), by Keith Owen and Trevor Coley, published by Society of Automotive Engineers, Inc. ("SAE"), B-34, 454.

<sup>47</sup> "Introduction to Alternative Fuel Vehicles," prepared by Science Applications International Corporation for Office of Alternative Fuels, Office of Transportation Technologies, Conservation and Renewable Energy, U.S. Department of Energy (March 2, 1992), NREL Contract No.: XF-1-11107-1, B-35, 17.

to natural gas, or in a fuel cell to power an electric motor.<sup>53</sup> Because it has a very high flame speed and a wide ignitability range, it can be used at extremely lean air-fuel ratios in ICEs.<sup>54</sup> The advantages of using hydrogen in a fuel cell rather than an ICE, on the other hand, are high efficiency and a vehicle that has zero emissions.<sup>55</sup> By using either hydrogen or electricity in vehicles, the emissions occur at the generating facility and are thereby centralized and easier to control, maintain, and monitor.<sup>56</sup>

Use of hydrogen gas as a fuel for commercial and private vehicles, however, remains largely a matter of research and development. Hydrogen has been used in the energy sector to enhance gasoline refining and to fuel rockets for space travel. The historic difficulty in using hydrogen as a vehicle fuel has been how to store it and the lack of a sufficient infrastructure to supply the hydrogen in relatively small volumes.

At the present time, it is not clear what power system technology is most suitable for the use of hydrogen and how much the power system and fuel storage will add to the cost of vehicles.<sup>57</sup> First, the weight of the storage tank on the vehicle would be very high if the fuel was used either in the liquid or compressed gaseous form. Second, hydrogen gas is highly explosive when mixed with air. The use of hydrides, such as iron-titanium, however, is a possible way of overcoming these drawbacks. Hydrogen is adsorbed by the hydride and can be released by the application of heat obtained from the vehicle's exhaust. Although this system would overcome many of the safety problems, the range of the vehicle would be restricted, filling would be slow, and the cost could be high.<sup>58</sup>

(3) *Electricity.* Electric vehicles ("EVs") are powered by electricity stored in a rechargeable battery pack. Current EVs use lead-acid batteries. Battery technology is an area of primary research for EVs, with the goal of

improving vehicle power and range. Nickel-iron and sodium-sulfur batteries, for example, are expected to have commercial EV applications within the next decade.<sup>59</sup> Use of electric vehicles currently is limited. Expansion of the use of EVs will depend to a large extent on the development of an infrastructure to supply the electricity to recharge the vehicle's batteries.

EVs may be produced with or without an on-board charging system. EVs with on-board charging systems may be able to recharge their batteries by connecting to a standard electrical dispensing outlet, or may be able to utilize separate charging equipment, depending on the on-board charging system. The voltage required for recharging EV batteries depends on the battery type. For G-vans, a 200/250-volt, single phase, 60 amperes ("amp"), power source is needed. This voltage range is compatible with the U.S. standard voltage: 208/240-volt, single phase, 60 amp.<sup>60</sup>

Battery charging currently involves connecting the battery pack to an off-board charger by plugging a cable into a socket in the front of the vehicle.<sup>61</sup> After fully charging the batteries, periodic refresher charges are made to maintain the batteries in a fully charged state. Fully discharged batteries can be recharged in approximately 8 to 10 hours, depending on ambient temperature. Batteries that are not fully discharged require less charging time. Because batteries may be damaged from leaving them in a discharged state, a regular charging routine is recommended. Vehicle range may be extended throughout the day by recharging the batteries at a site other than a regular recharging station. These "opportunity charges" require an on-board charger, which is not currently included on most EVs.<sup>62</sup>

The Electric Power Research Institute ("EPRI") has identified three methods of EV charging for development, depending on the range of power levels anticipated for charging EVs. Level 1 would allow recharging by plugging into the most common grounded electrical outlet. Level 2 would require special equipment dedicated to EV charging

and connection to the electric power supply. Level 2 is expected to be the primary method for charging at both private and public facilities. Level 3 would allow recharge at commercial fast charge stations in about the same time it takes to refuel an internal combustion vehicle.<sup>63</sup>

Two methods of connecting an EV or recharging are under development, conductive and inductive. Conductive connections are the most widely used method of connecting electrical sources and loads. A conductive connection consists of contacts that join the electrical conductors at the interface, such as plugging a lamp cord into a standard electrical outlet. In an inductively coupled system, alternating current power is transferred magnetically or "induced" between a primary winding on the supply side to a secondary winding on the vehicle side of the interface. Thus, there is no direct contact through which electrical power flows.<sup>64</sup>

## 2. Comments on Disclosures Proposed in NPR

The Commission proposed in the NPR that retailers of non-liquid alternative fuels post standard labels identifying the commonly used names of those fuels on public fuel dispensers (including electrical dispensing units and recharging stations used to recharge EV batteries).<sup>65</sup> The Commission also proposed requiring disclosure of the gaseous fuel's principal component and permitting disclosure of other components, expressed as minimum percentages.<sup>66</sup> The Commission's proposal recognized that electricity used for recharging EV batteries might need to be subject to different labeling disclosures, and solicited comment on whether a different measure of content (e.g., requiring disclosure of voltage for electricity) would be more appropriate.<sup>67</sup>

<sup>53</sup> "Electric Vehicle Charging Systems: Executive Summary" (undated draft), Electric Power Research Institute ("EPRI"), submitted to Neil Blickman, FTC, on August 30, 1994, by W.I. Whiddon & Associates, Inc., B-49, 1-2.

<sup>54</sup> *Id.*, at 2.

<sup>55</sup> 59 FR 24014, 24018.

<sup>56</sup> *Id.* CNG vehicle fuel is composed primarily of methane with small percentages of ethane, propane, butane, nitrogen, helium, carbon dioxide and hydrogen sulfide. Hydrogen vehicle fuel is composed primarily of hydrogen, with very small percentages of water, oxygen, and nitrogen. See sections III.B.1.b (1) and (2) *supra*.

<sup>57</sup> Unlike the other alternative fuels, the electricity used to recharge the batteries that power electric vehicles is not dispensed from a conventional fuel pump. It is dispensed from an electrical dispenser or recharging station and produces different physical effects depending on the type of dispenser or charging equipment

<sup>58</sup> "Hydrogen-Fueled Vehicles Technology Assessment Report," for California Energy Commission, by Technology Transition Corporation, and Center for Electrochemical Systems and Hydrogen Research, Texas A&M University (by principal investigators Dr. David Swan, Assistant Director, Center for Electrochemical Systems and Hydrogen Research, and Debbi L. Smith, Manager, Resource Development and Special Projects, Technology Transition Corporation), B-36, 1.

<sup>59</sup> Automotive Fuels Handbook, B-34, 458.

<sup>60</sup> Hydrogen-Fueled Vehicles Technology Assessment Report, B-36, 1.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Automotive Fuels Handbook, B-34, 458.

<sup>64</sup> Introduction to Alternative Fuel Vehicles, B-35, 35.

<sup>65</sup> *Id.*, at 36. The G-van is a limited production, one-ton van produced by Conceptor Industries, which became available December 1, 1990. According to Introduction to Alternative Fuels at 34, the G-Van is the only EV certified to meet all U.S. Federal Motor Vehicle Safety Standards ("FMVSS").

<sup>66</sup> Standard equipment for a charging station include an off-board charger and circuit breaker. An AC kWh meter is recommended to monitor power consumption. *Id.*, at 36.

<sup>67</sup> *Id.*, at 41.

Under the proposal, the labels would be placed conspicuously in full view of consumers (i.e., ultimate purchasers) and as near as reasonably practical to the fuel's unit price disclosure. These proposals are analogous to provisions in the Fuel Rating Rule pertaining to liquid alternative fuels.<sup>68</sup> The Commission proposed this simple labeling requirement for fuel dispensers after considering how it might best balance consumers' needs for useful and timely cost and benefit information with the problems associated with displaying such information in a simple label format.

Twenty-three commenters addressed the issues raised in the NPR. None opposed the Commission's proposals as a whole. Nine commenters generally supported the Commission's proposals in their entirety because, if adopted, they would be consistent with the Fuel Rating Rule's requirements for liquid alternative fuels, and they would assist consumers in identifying the proper fuel for their vehicles.<sup>69</sup> Three commenters also supported the Commission's proposals by stating specifically that the fuel dispenser label should identify the fuel in a standardized format to direct consumers to the correct fuel dispensers.<sup>70</sup> These and other suggested labeling disclosures are discussed in more detail in sections III.B.3 and 4 *infra*.

### 3. Label Disclosures Proposed for Final Rule

Based on the comments received and the requirements of section 406(a) of EPA 92, for the fuel labeling requirement the Commission proposes that retailers of the non-liquid alternative fuels CNG, hydrogen and electricity post standard labels identifying the commonly used names of those fuels on public fuel dispensers (including electric dispensers used to recharge batteries in electric vehicles).<sup>71</sup> The labels would be placed conspicuously in full view of consumers and as near as reasonably practical to the fuel's unit price.

through which it is dispensed. See section III.B.1.b(3) *supra*. Therefore, the Commission recognized that electricity used as a vehicle fuel might have to be rated in accordance with the characteristics of the specific electrical dispenser or recharging station.

<sup>68</sup> 16 CFR 306.10(b)(1), 306.10(f) (1994).

<sup>69</sup> API, G-25, 1-3; EIA/EEU-USD, H-2, 1; Mobil, G-2, 1-3; NAFA, G-20, 1; NPGA, G-18, 2-3; Phillips 66, G-15, 1; RFA, G-5, 2-3, (Supp.), G-5, 1; SIGMA, G-23, 1; Sun, G-1, 1-2.

<sup>70</sup> DOE, H-10, 2-4; RFA, G-5, 2-3, (Tr.), 28, 38; Thomas BB, G-10, 1. See also AAMA (Tr.), 37, 62 (fuel dispenser label should identify the fuel).

<sup>71</sup> See §§ 309.1(q) and 309.15 of the text of the proposed rule in section XI *infra*.

With respect to CNG and hydrogen, the Commission also proposes requiring disclosure of the fuel's principal component and permitting disclosure of other components, expressed as minimum molecular percentages ("minimum mole percent").<sup>72</sup> These proposals are analogous to provisions in the Fuel Rating Rule pertaining to liquid alternative fuels.<sup>73</sup> Most of the commenters addressing these issues stated they supported such proposals because, if adopted, they would be consistent with the Fuel Rating Rule's requirements for liquid alternative fuels, and they would assist consumers in identifying the proper fuel for their vehicles. Therefore, all alternative fuels marketed to consumers would be subject to consistent requirements.<sup>74</sup>

As mentioned, the principal component of the vehicle fuel CNG is methane, and the principal component of hydrogen is hydrogen. Several commenters specifically concurred with the Commission's proposal to require

<sup>72</sup> *Id.* See also section III.B.5.b(1) *infra*. The unit of the amount of a substance is defined under the international system of units to be the amount of substance of a system that contains as many elementary entities as there are atoms in 0.012 kilogram of carbon 12. When the mole is used, the elementary entities must be specified and may be atoms, molecules, ions, electrons, other particles, or specified groups of such particles. "The International System of Units (SI)," NIST Special Publication 330 (1991 edition), August 1991, U.S. Department of Commerce, National Institute of Standards and Technology (hereinafter cited as "NIST Publication 330"), B-43, 4-5.

<sup>73</sup> 16 CFR 306.10(b)(1) and 306.10(f) (1994).

<sup>74</sup> API, G-25, 1-3 (until a private voluntary, consensus standards organization develops specifications for alternative fuels, additional disclosure requirements are inappropriate; expand Fuel Rating Rule to cover non-liquid alternative fuels to encourage fuel-neutral regulatory scheme; and labeling of principal component may provide useful information to consumers); EIA/EEU-USD, H-2, 1 (expressed general support for the proposed rule); Mobil, G-2, 1-3 (the proposed label is consistent with the Fuel Rating Rule, and no other disclosures should be required, but allowing disclosure of components other than the fuel's principal component, without restrictions, could result in consumer misinformation); NAFA, G-20, 1 (endorses a uniform labeling requirement for alternative fuels); NPGA, G-18, 2-3 (extremely important that all alternative fuels be subject to essentially identical requirements, and the Commission's proposal is sufficient under the statutory requirements); (Tr.), 48-49 (issue is how to get the consumer to the correct pump, and in that respect, the orange labels for liquid alternative fuels do an effective job); Phillips 66, G-15, 1; RFA, G-5, 2-3 (the benefit of providing additional information beyond that proposed is not well established); (Tr.), 28, 31, 38, (Supp.), G-5, 1 (the current labeling requirements for alternative fuels under the Fuel Rating Rule are adequate and the same labeling requirements should be extended to gaseous fuels); SIGMA, G-23, 1 (supports the proposed requirements and urges the Commission to adopt the proposed rule without change); Sun, G-1, 1-2 (agrees with the Commission's proposal to extend the Fuel Rating Rule labeling requirements to non-liquid alternative fuels thereby placing equal regulatory requirements on all alternative fuels).

disclosure of the minimum methane content of CNG to assist consumers in purchasing CNG that satisfies requirements specified by engine manufacturers to meet performance and emissions certification levels.<sup>75</sup> The Commission also notes that commenters and other technical sources indicate that because natural gas composition varies throughout the country, its methane content can vary from 85 percent to 99 percent.<sup>76</sup> Methane content is important because CNG with too low a methane content will not meet manufacturers' requirements for CNG vehicle engines. Because CNG exists with too low a methane content to be used as a vehicular fuel,<sup>77</sup> requiring disclosure of the minimum methane content will help ensure that non-vehicular CNG is not inadvertently sold for vehicular purposes. Although CNG sold as a vehicle fuel should always meet minimum vehicle needs, information about minimum methane content can help assure consumers that the CNG they are purchasing will meet their engines' needs. The Commission's proposed labeling approach for CNG and hydrogen provides a basic measure of fuel quality and, used in conjunction with the owner's manual containing the vehicle manufacturer's fuel recommendations, it provides consumers with the information necessary to select the fuel on which their vehicle has been designed to perform.<sup>78</sup>

With respect to public electric vehicle fuel dispensing systems, the commenters recommended that the Commission require disclosure of the minimum operating parameters that are necessary to protect the consumer operating the equipment, the vehicle whose batteries are being charged, as well as the charging equipment. Several commenters suggested these parameters include disclosure of the voltage at which electrical power is supplied by

<sup>75</sup> AAMA (Tr.), 37, 62 (label should identify the fuel), 81 (at this time a minimum methane content disclosure is appropriate); Flxible (Tr.), 74, (Supp.), G-12, 2 (dispensers for CNG should be labeled with the minimum methane content due to the requirements dictated by some engine manufacturers to meet performance and emissions certification levels); RFA, G-5, 3; Sun, G-1, 1.

<sup>76</sup> See note *supra*.

<sup>77</sup> See Flxible (Tr.), 74-77.

<sup>78</sup> Although at present CNG vehicles apparently are designed to run on the broad range of methane content in available vehicle CNG, in the future manufacturers may design vehicles favoring specific, higher methane contents. If so, producers and marketers will have the flexibility to develop and blend fuels appropriate for those specifications as well as perhaps location and climate, and retailers will have the flexibility to adjust fuel dispenser labels accordingly, if they chose to do so

electric charging equipment.<sup>79</sup> Two commenters suggested that the electric recharging station label include the maximum current in amperes that can be delivered,<sup>80</sup> and two recommended that the label indicate whether the charging equipment supplies alternating or direct current.<sup>81</sup> Another commenter stated that because there are two distinct charging technologies, the label should indicate whether the unit is a conductive charger (a plug on a cord) or an inductive charger (a paddle in a port system).<sup>82</sup> Two commenters indicated that the label should disclose the kilowatt capacity of the charging equipment to tell consumers how quickly their vehicles could recharge.<sup>83</sup>

The commenters indicated that the proposed disclosures would be useful in assisting consumers to locate electric fuel dispensers that are compatible with the consumers' vehicles, and to determine how quickly their vehicles' batteries would recharge. Accordingly, the Commission proposes requiring several brief disclosures on labels on public electric vehicle fuel dispensing systems (i.e., electric charging system equipment and electrical energy dispensing systems).<sup>84</sup> The proposed rule would require that labels on public electric vehicle fuel dispenser systems include, in addition to the commonly used name of the fuel (e.g., electricity), kilowatt capacity, voltage, current (either AC or DC), amperes and type of charger (either conductive or inductive).<sup>85</sup>

The proposed requirements for CNG, hydrogen and electricity thus would provide consumers with the most important pieces of information needed when refueling: Fuel type and composition (or, for electricity, other relevant parameters). Although in the absence of such requirements sellers could be expected to identify the fuels sold, they may not do so in a standardized format that assists consumers in identifying the proper fuel quickly. Furthermore, it is uncertain whether they would provide information regarding the precise composition of the fuels, or relevant parameters of the EV fuel dispenser.

In addition, the Commission has concluded that other comparative

information on the fuel dispenser, as discussed in section III.B.4 *infra*, is unlikely to be necessary in most instances. For consumers with dedicated AFVs (i.e., vehicles capable of operating on only one fuel), the selection process between competing fuels is concluded once an AFV is acquired. Consumers driving dual or flexible fueled vehicles (i.e., vehicles capable of being powered both by a conventional and an alternative fuel) will be limited to purchasing fuels meeting their engines' requirements (one being gasoline, with which consumers are already familiar and which is already labeled with pertinent information). Thus, providing consumers with other information comparing various types of alternative fuels is best done prior to the time the vehicle is acquired.

Further, excluding other, less important information avoids information overload. In contrast to vehicle purchases, consumers' fuel purchases typically occur in a quick transaction. In a report to Congress assessing the need for a uniform national label on fuel pumps, the Commission noted that time constraints may affect how consumers read, understand, and use information.<sup>86</sup> Indeed, "studies show that less accurate information processing occurs under time constraints; test subjects focus on fewer pieces of information and unduly emphasize negative information."<sup>87</sup> Simplicity therefore is an even greater consideration in the labeling of fuels than in the labeling of AFVs.

#### 4. Label Disclosures Considered But Not Proposed for Final Rule

In formulating its labeling proposals in this notice, the Commission, as required, sought to reconcile several competing concerns. As noted previously, EPA 92 directs the Commission to develop uniform labels disclosing appropriate cost and benefit information. However, in determining what information is appropriate, it must consider the problems associated with developing and publishing such information on simple labels. Given this context, and after considering the comments, the Commission has considered and rejected several alternative disclosures for dispenser labels suggested by the commenters.

*a. Octane rating.* Four commenters addressed whether the Commission should require, or allow, posting of

octane ratings for non-liquid alternative fuels. Nebraska EO recommended that the Commission require disclosure of an octane number for spark ignition or a cetane number for compression ignition fuels.<sup>88</sup> NACAA supported requiring disclosure of octane rating if alternative fuels are available in different grades.<sup>89</sup> AGA/NGVC did not recommend that the Commission require disclosure of octane rating, but suggested that the Commission clarify that fuel retailers have the option of disclosing a fuel's minimum octane rating as an "other component."<sup>90</sup> AGA/NGVC stated that, although octane levels for natural gas are not likely to vary at different retailers, the octane rating of natural gas is a valuable component that allows manufacturers to optimize dedicated vehicles to run more efficiently. AGA/NGVC asserted, therefore, that providing consumers with octane information highlights the advantages of natural gas and gives them a basis for comparing its qualities with other fuels. NPGA, however, suggested that it would not be appropriate for the Commission to require the posting of octane ratings for CNG, hydrogen or electricity. NPGA commented that there are no standards for determining the octane ratings of these fuels, and presently these fuels are not being developed to be available in different grades at a station.<sup>91</sup>

The Commission's Fuel Rating Rule requires disclosure on fuel pumps of gasoline's octane rating, which is a measure of how well the gasoline resists engine knocking. The octane rating needed to prevent knocking varies with the engine's compression ratio, and different engines may require gasoline with different octane ratings. The Fuel Rating Rule is designed to enable consumers to buy gasoline with an octane rating high enough to prevent engine knock, and to help consumers avoid "octane overbuying" or buying gasoline with an octane higher than needed to prevent engine knock.

When it conducted the rulemaking proceeding to add pump posting requirements for liquid alternative fuels to the Fuel Rating Rule, the Commission noted that, unlike gasoline, the physical and chemical properties of each liquid alternative fuel may not vary substantially.<sup>92</sup> The Commission also observed that it expected that engines designed for alternative fueled vehicles would be designed to use fixed-octane alternative fuels without engine knock.

<sup>79</sup> AAMA (Tr.), 91-92; Boston Edison, G-26, 5-6, (Tr.), 88-91, 93-95, 100; CEC, H-8, 1-6; DOE, H-10, 2-4; Mobile, G-2, 3.

<sup>80</sup> Mobil, G-2, 3; CEC, H-8, 1-6.

<sup>81</sup> Boston Edison (Tr.), 90; CEC, H-8, 1-6.

<sup>82</sup> Boston Edison (Tr.), 88.

<sup>83</sup> Boston Edison (Tr.), 90; RFA (Supp.), G-5, 1.

<sup>84</sup> See § 309.1(j), (l), and (m) of the text of the proposed labeling rule in section XI *infra*.

<sup>85</sup> See §§ 309.1(q)(2) and 309.15 of the text of the proposed rule in section XI *infra*.

<sup>86</sup> Federal Trade Commission, Study Of A Uniform National Label For Devices That Dispense Automotive Fuels to Consumers (1993), at 29.

<sup>87</sup> *Id.*, at 29 n.152.

<sup>88</sup> Nebraska EO, H-9, 1.

<sup>89</sup> NACAA, H-6, 1-2.

<sup>90</sup> AGA/NGVC, G-6, 5-6.

<sup>91</sup> Phillips 66/NPGA (Tr.), 49-50.

<sup>92</sup> 58 FR 16464, 16469.

The Commission further stated that there might be practical problems in implementing a reliable octane certification and posting program for alternative liquid automotive fuels, because of the lack of a standardized, such as an ASTM-approved, test method for determining octane ratings of such fuels.<sup>93</sup> Finally, the Commission expressed concern that the posting of high octane ratings associated with alternative liquid automotive fuels may contribute to the misperception that high-octane gasoline always is best for vehicles, and thereby aggravate existing gasoline octane overbuying.<sup>94</sup>

After considering the comments submitted in this proceeding, as well as the comments submitted in the liquid alternative fuel amendment proceeding (which the Commission finds are relevant to this proceeding),<sup>95</sup> the Commission has determined not to propose requiring the posting of octane ratings for CNG and hydrogen. The Commission has concluded that, unlike octane ratings for gasoline, there appears to be little or no benefit to disclosing octane ratings for alternative fuels at this time. Octane ratings for alternative fuels are high enough to avoid engine knock problems in vehicles designed to use alternative fuels, and, such ratings do not provide information relevant to vehicle performance of alternative fueled vehicles. In addition, the octane ratings of a given type of alternative fuel would not vary significantly.<sup>96</sup>

In contrast, there are significant disadvantages to requiring octane posting and certification for alternative fuels. In particular, the Commission is reluctant to require a disclosure that might mislead consumers about the significance of the high octane ratings of alternative fuels, which exceed the octane ratings of gasoline. Such a disclosure also might cause consumers to believe that gasoline and alternative fuels are interchangeable, or that different alternative fuels are interchangeable with one another. Further, it also might foster consumer misperceptions that higher octane necessarily signifies higher quality and better performance.<sup>97</sup>

b. *Comparative information based upon BTUs or gasoline-gallon-equivalents.* As an alternative to the Commission's proposal, three commenters, Unocal, PCC and DOE, suggested that the Commission require

the use of alternative fuel labels that advise consumers of the price of an alternative fuel and the quantity of the alternative fuel dispensed in terms of gasoline-gallon-equivalent ("GGE") units based on the energy contents of the alternative fuels.<sup>98</sup> According to the commenters, such a disclosure would allow consumers to compare the cost of an alternative fuel to that of gasoline using a common energy unit.

However, seven commenters suggested that such comparative cost data is not conducive to fuel labeling and is more a dispenser equipment metering and fuel marketing issue.<sup>99</sup> The commenters also indicated that Commission requirements to disclose comparative cost data in terms of the energy contents of alternative fuels may not be necessary if the weights and measures organizations accept, as a method of sale, measurement of alternative fuels in terms of gasoline-gallon-equivalents.

Indeed, the Commission notes that the National Conference on Weights and Measures ("NCWM"), a consensus standards-writing organization for state and local regulatory agencies, at its recent annual meeting, adopted for national use the GGE as a method of sale for CNG sold as an engine fuel.<sup>100</sup> According to the NCWM, the GGE is defined as 5.660 pounds of CNG. (Consumers would not purchase one gallon of CNG, but would receive 5.660 pounds of CNG with the approximate equivalent energy of a gallon of gasoline.)

CNG dispensers, therefore, will likely display three items of information: (1) Total sale price for the CNG in dollars, e.g., \$3.75, (2) amount of CNG in GGE in this sale, e.g., 5.00, and (3) unit price per GGE in dollars/GGE, e.g., \$0.749. A NCWM approved dispenser label also would state, "1 Gasoline Gallon Equivalent is Equal to 5.66 lbs. of Natural Gas. This quantity of Natural Gas delivers approximately the same amount of energy to your vehicle as a typical gallon of gasoline."

<sup>98</sup> DOE, H-10, 2-4; PCC, G-22, 1, 3; Unocal, G-9, 2.

<sup>99</sup> AGA/NGVC, G-6, 3, 5-6, (Tr.), 44, 59; API, G-25, 1-3 (commercial information that enables the consumer to evaluate the costs of an alternative fuel purchase will be displayed on the dispenser); DOE (Tr.), 53 (GGE is more a metering issue); ETC (Tr.), 41; Mobil, G-2, 1-2; NACAA (Tr.), 39 (information relating to the sale of fuels by gasoline-gallon-equivalents is more a metering and marketing issue); RFA (Tr.), 57.

<sup>100</sup> See Program and Committee Reports for the National Conference on Weights and Measures 79th Annual Meeting, July 17-21, 1994, B-37; and Brickencamp, *Method of Sale for CNG Paves Way to Greater Public Acceptance*, Nat. Gas Fuels, Sept. 1994, B-47, 47.

After considering the comments received, and the NCWM's recent action, the Commission has determined not to propose GGE disclosures. Such information is not conducive to keeping the fuel label simple as required by EPA 92. Further, NCWM's action indicates this information is more an equipment metering issue that is more properly addressed by weights and measures organizations. Commission required disclosures would be unnecessary and duplicative, especially in connection with the sale of CNG. Moreover, if national conversion factors for the GGE of other alternative fuels are defined in the future, then it is likely that weights and measures authorities will issue requirements to enable the sale of those fuels in energy equivalencies. Further, there is no evidence on the record to suggest that the Commission could define the GGE of fuels other than CNG at this time.

On a related point, Boston Edison stated that comparisons based upon GGEs are less accurate than those based upon fuel neutral British thermal units ("Btus").<sup>101</sup> However, two commenters specifically opposed a requirement that fuel dispenser labels identify the heating value or energy content of a fuel expressed in Btus. AGA stated that a Btu disclosure would be practically meaningless to consumers,<sup>102</sup> and NPGA stated that a Btu rating might be useful to consumers only when choosing a new vehicle or deciding whether to convert an existing vehicle to an alternative fuel, but not when refueling.<sup>103</sup>

After considering the record, the Commission has decided not to propose requiring that fuel dispenser labels identify the fuels' heating values. Instead of helping consumers make informed purchasing decisions, this option might instead confuse or mislead consumers. The energy content of a fuel, as measured by its Btu rating, is an imprecise gauge of that fuel's actual fuel economy. Driving range and fuel economy are the function of many variables (e.g., engine design, engine efficiency, driving habits), and not simply the energy content of a fuel. As a result, Btu ratings do not always accurately reflect actual fuel economy. In addition, because the heating values of the alternative fuels are less than the heating value of gasoline, labels based on heating values might encourage consumers to purchase gasoline, because such labels might suggest

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 16470.

<sup>95</sup> See 58 FR 41356, 41361.

<sup>96</sup> Phillips 66/NPGA (Tr.), 49-50.

<sup>97</sup> *Id.*

<sup>101</sup> Boston Edison, G-26, 5-6.

<sup>102</sup> AGA/NGVC (Tr.), 24.

<sup>103</sup> Phillips 66/NPGA (Tr.), 50.

alternative fuels are less efficient than gasoline.

Finally, the Commission notes that the BTU content of alternative fuels is largely determined by their chemical content. Thus, disclosure of the percentage content of the principal component provides the energy content information that consumers need to make fuel cost comparisons. For example, if a consumer knows the price per gallon of M-85 and the miles-per-gallon a vehicle can achieve on M-85, then he can calculate the fuel cost per mile. Similarly, if a consumer knows the price per cubic foot of CNG consisting of 90 percent methane and the miles-per-cubic foot achievable with that fuel, he can calculate the fuel cost per mile.

*c. Performance effects (cruising range).* One commenter suggested that fuel dispenser labels advise consumers that the cruising range of the vehicle when running on an alternative fuel will be less than when the vehicle is running on gasoline due to the alternative fuel's lower energy content.<sup>104</sup> However, two commenters stated that information relating to the vehicle's cruising range is not appropriate for a dispenser label.<sup>105</sup> Phillips 66/NPGA further commented that cruising range is not necessarily less when operating on an alternative fuel, such as propane.<sup>106</sup>

After considering the comments, the Commission has determined that a general statement on a fuel dispenser label relating to cruising range would not provide sufficient comparative information to consumers to enable them to make reasonable purchasing choices and comparisons between fuels of the same type. However, the Commission recognizes that information relating to cruising range would be useful to consumers when choosing a vehicle or deciding whether to convert an existing vehicle to an alternative fuel. Therefore, the Commission has tentatively determined that information relating to cruising range would be appropriate on labels it is proposing for covered AFVs, as discussed in section III.C *infra*.

*d. Meets material specifications.* Several commenters pointed out the need for fuel specifications for all alternative fuels.<sup>107</sup> To expedite the establishment of such national specifications, AMI recommended that the fuel dispenser labels guarantee

delivery of alternative fuels meeting specifications defined by the California Air Resources Board in 1993,<sup>108</sup> until national standards are in place. AMI stated that without specifications, neither emission benefits nor engine performance can be reliably determined, to the ultimate detriment of the consumer.<sup>109</sup> Another commenter, however, specifically stated that California's fuel specifications may not be practical for the rest of the country.<sup>110</sup>

During its rulemaking proceeding to establish automotive fuel ratings for the liquid alternative fuels, the Commission also considered this type of labeling approach, and whether it would be feasible to assist consumers in making choices and comparisons between alternative fuels.<sup>111</sup> Most commenters in that proceeding supported a fuel labeling approach based on specifications, but only if it was based on consensus fuel standards or specifications. Under this approach, disclosure of a particular fuel descriptor would indicate that the fuel meets technical material specifications established by a recognized standards-setting organization. Standards established under a consensus process would have the advantage of being developed with input from and approval of engine manufacturers, fuel suppliers, users, and regulators. The use of label descriptors based on standard specifications would benefit consumers because they could determine easily whether alternative fuels marketed under the descriptors were compatible with the original vehicle equipment manufacturer's requirements. In addition, this approach would allow an alternative liquid automotive fuel supplier to improve the fuel beyond the minimum specifications and promote the improved fuel over those of its competitors.

As anticipated by the Commission, however, the primary objection in the liquid alternative fuels proceeding to this option was that neither the American Society for Testing and

Materials ("ASTM") nor any other consensus standards-setting organization had developed and adopted specifications and standards for most of the alternative automotive fuels (the exception being liquefied petroleum gas for which ASTM has developed a standard). One commenter in the current proceeding specifically noted that ASTM has not developed a standard for CNG.<sup>112</sup> But, another commenter stated that the Society of Automotive Engineers has established a "recommended practice" for CNG called J1616.<sup>113</sup> Recommended practice SAE J1616 was issued as a guide to address the composition of natural gas used as an automotive fuel, not as a standard for CNG. The guide states it anticipates that a CNG standard will evolve, but emphasizes that experience and more technical knowledge are needed.<sup>114</sup>

Disclosure of a fuel descriptor based on accepted and approved fuel specifications and standards could provide meaningful comparative information to consumers relating to the quality of the fuel they are purchasing. After considering the comments in this proceeding, however, and in light of the conclusions reached by the Commission in the liquid alternative fuel proceeding, the Commission finds that adequate, generally accepted standards and specifications suitable for nationwide use do not presently exist for most alternative fuels, and specifically do not exist for CNG or hydrogen. Further, the Commission has an insufficient record and basis on which to adopt California's standards for alternative vehicle fuels. Therefore, the Commission has determined not to propose that fuel dispenser labels guarantee the delivery of fuels meeting California's specifications.

The Commission continues to favor the development of specifications and standards that define alternative fuels by a consensus standards-setting organization, such as ASTM, or by a government agency with appropriate engineering and technical expertise to set such specifications and standards for nationwide use. This would permit participation by affected parties such as alternative fuel producers and providers, engine manufacturers, regulators, consumers, and organizations or government agencies with pertinent technical expertise. It also would provide a mechanism for evaluating proposed test methods and

<sup>108</sup> See Specifications for Compressed Natural Gas, Title 13, California Code of Regulations, § 2292.5 (1993), B-41; Specifications for Hydrogen, Title 13, California Code of Regulations, section 2292.7 (1993), B-42.

<sup>109</sup> AMI, G-3, 1.

<sup>110</sup> AAMA (Tr.), 29.

<sup>111</sup> 58 FR 41356, 41364, 41365. In the Alternative Fuel Rule proceeding, several commenters also opposed Commission adoption of alternative fuel specifications developed by the California Air Resources Board, because they were not developed by a consensus process, were technically flawed, and were developed for California's particular needs and, therefore, could be overly restrictive for other parts of the country. *Id.*

<sup>112</sup> API (Tr.), 77.

<sup>113</sup> AGA/NGVC (Tr.), 24.

<sup>114</sup> Society of Automotive Engineers, "Recommended Practice for Compressed Natural Gas Vehicle Fuel," SAE J1616, B-40, 16.

<sup>104</sup> PCC, G-22, 1, 3.

<sup>105</sup> AGA/NGVC (Tr.), 37; Phillips 66/NPGA (Tr.), 50-51.

<sup>106</sup> Phillips 66/NPGA (Tr.), 50.

<sup>107</sup> AAMA (Tr.), 29; AMI, G-3, 1; API, G-25, 1-3, (Tr.), 28, 77; EMA, G-21, B-9, (Supp.), 1-2; Flexile (Tr.), 76; NAFA (Tr.), 74; RFA (Tr.), 38; Thomas BB, G-10, 1.

procedures necessary to determine compliance with the standards.

e. *Environmental benefits (emissions).* AMI suggested that the fuel dispenser label indicate the environmental benefits of alternative fuels.<sup>115</sup> Specifically, AMI suggested that the Commission require disclosure of a generic statement on alternative fuel labels such as: "Use of this fuel can result in significant reductions in exhaust pollutants compared with an equivalent gasoline powered vehicle." Phillips 66/NPGA commented, however, that such a statement would not particularly assist consumers in making a fuel purchasing decision at the dispenser.<sup>116</sup>

After considering the comments, the Commission has determined that including such a generic statement on the fuel dispenser label would not provide sufficient information to assist consumers in making choices and comparisons. However, the Commission recognizes that information relating to emissions and the environmental benefits of alternative fuels would be useful to consumers when choosing an alternatively fueled vehicle or deciding whether to convert an existing vehicle to an alternative fuel. Therefore, the Commission has tentatively determined that information relating to emissions would be appropriate on the labels it is proposing for covered AFVs, as discussed in section III.C *infra*.

f. *Pressure.* For safety reasons, two commenters recommended that CNG fuel dispensers display the fueling pressure, either 2,400, 3,000 or 3,600 P.S.I. (pounds per square inch) so that dispenser fueling pressure is compatible with CNG vehicle tank storage pressure.<sup>117</sup> For example, fueling a 2,400 P.S.I. vehicle tank from a 3,600 P.S.I. fueling dispenser could result in severe damage to a fueling system, as well as personal injury if an explosion occurred. Two commenters, however, indicated that fueling pressure is a safety issue that has been addressed by the industry in designing dispensers. Therefore, this information is unnecessary on a CNG dispenser label.<sup>118</sup>

In developing this proposal, the Commission considered whether including fueling pressure on CNG dispenser labels would provide timely comparative information to consumers in light of the independent steps the industry has taken to address this issue.

The commenters indicated that the industry has developed pressure coded standard dispenser/vehicle CNG connectors so that consumers will not be able to overfuel a low pressure vehicle from a high pressure dispenser.<sup>119</sup> Further, the use of standard CNG vehicle fueling connectors complying with the ANSI/AGA NGV1 specification is required at public dispensing points by National Fire Protection Association safety standard 52 ("NFPA 52"), which is a fire code adopted by most, if not all, states.<sup>120</sup> Accordingly, the Commission has determined that a proposal requiring the disclosure of fueling pressure on CNG dispenser labels is unnecessary at this time. Further, the proposed rule would require that labels for new and used covered AFVs include standard statements informing consumers that they can obtain vehicle safety information by calling the toll-free telephone number for DOT/NHTSA's Auto Safety Hotline, as discussed in section III.C *infra*.

g. *Safety warnings.* Several commenters focused on safety issues.<sup>121</sup> NACAA stated, for example, that the labels should note any hazards or cautions to prevent damage to automotive engines.<sup>122</sup> Nebraska EO commented that labels should include a cautionary note that this and all fuels are hazardous.<sup>123</sup>

The Commission has considered whether including a safety warning statement on a fuel dispenser label would help consumers make reasonable fuel choices and comparisons. The Commission notes, however, that safety standards for operation of motor vehicle fuel-dispensing stations are covered by the Uniform Fire Code.<sup>124</sup> Further, to

some extent, the proposed fuel labeling requirements, particularly those for EV public dispenser systems, implicitly consider safety issues for refueling by directing consumers to the proper fuel dispenser. Beyond this (and fire code requirements that are already in place), consumers considering the purchase of AFVs may find safety information more pertinent when purchasing an AFV. Accordingly, the Commission has determined that rather than propose that safety disclosures appear on fuel dispenser labels, it will propose requiring a reference to DOE's consumer information brochure and NHTSA's Vehicle Safety Hotline on labels for covered AFVs, as discussed in section III.C *infra*. Consequently, the Commission anticipates that a marketer's refueling instructions, whether appearing in an AFV owner's manual or on the fuel dispenser, would discuss or incorporate relevant safety measures. However, if in the future information becomes available demonstrating a need for the Commission to require safety-related disclosures on the dispenser labels, the Commission can consider it during its periodic review of the Rule.

h. *Refueling instructions.* One commenter recommended that fuel dispenser labels include appropriate refueling instructions.<sup>125</sup> As a marketing issue, however, alternative fuel marketers will want to display refueling instructions for consumers on alternative fuel dispensers prominently as is done now on gasoline dispensers. Thus, the Commission believes that it is unnecessary to include refueling instructions on fuel dispenser labels. Such instructions may vary by fuel and may exceed the constraints of a simple label format. Accordingly, the Commission has determined not to propose requiring that refueling instructions appear on fuel dispenser labels for the non-liquid alternative fuels.

i. *Wobbe number.* Two commenters stated that for CNG, two primary factors that describe the general characteristics of natural gas are the methane content and the Wobbe number.<sup>126</sup> According to RFA, the Wobbe number is a measure of the fuel energy flow rate through a fixed

<sup>119</sup> See ANSI/AGA NGV1-1994 American National Standard For Compressed Natural Gas Vehicle (NGV) Fueling Connection Devices, attached to AGA/NGVC's comment, G-6.

<sup>120</sup> ANSI/NFPA 52 Compressed Natural Gas (CNG) Vehicular Fuel Systems, 1992, B-39. See also Stookey, *An Analysis of the 1994 Uniform Fire Code Requirements for CNG Fuel Stations*, Nat. Gas Fuels, June 1994, at 27-30, B-48.

<sup>121</sup> E.g., Thomas BB, G-10, 1.

<sup>122</sup> NACAA, H-6, 1-2.

<sup>123</sup> Nebraska EO, H-9, 1.

<sup>124</sup> For example, in July 1993, the voting membership of the Uniform Fire Code ("UFC") and Uniform Fire Code Standards adopted new regulations for the design, construction and operation of CNG motor vehicle fuel-dispensing stations. The minimum requirements are primarily based on the requirements of NFPA 52, "Standard for CNG Vehicular Fueling Systems," 1992 edition. The Uniform Fire Code (which is a democratic code development organization whose membership includes fire and building officials, design professionals, equipment manufacturers and trade organizations) and the Uniform Fire Code Standards are a model code that provides minimum design requirements for building and site fire protection,

the safe storage and use of hazardous materials, general fire and life safety requirements and maintenance requirements for the fire safety and fire protection designs of the Uniform Building Code. Article 52 of the 1994 Uniform Fire Code addresses the design, construction, commissioning and operation of all motor vehicle fuel-dispensing stations. See Stookey, *An Analysis of the 1994 Uniform Fire Code Requirements for CNG Fuel Stations*, Nat. Gas Fuels, June 1994, B-48, 27.

<sup>125</sup> Thomas BB, G-10, 1.

<sup>126</sup> EMA (Supp.), G-21, 1-2; RFA, G-5, 3.

<sup>115</sup> AMI, G-3, 2.

<sup>116</sup> Phillips 66/NPGA (Tr.), 51.

<sup>117</sup> Flexible (Supp.), G-12, 2; Thomas BB, G-10, 1.

<sup>118</sup> Phillips 66/NPGA (Tr.), 51; AGA/NGVC (Tr.), 103-104.

orifice under given inlet conditions. RFA states that a change in Wobbe number of the gas will have a direct correlation to changes in engine performance due to variations in the air/fuel ratio of orifice based metering systems of vehicles.<sup>127</sup> In addition, EMA stated that the Wobbe number is an indicator of the fuel's heating value.<sup>128</sup> Although neither commenter recommended that the Commission require disclosure of the Wobbe number on CNG dispenser labels, their comments suggested that the Commission should at least consider it as an option. One commenter specifically opposed a Wobbe number disclosure, stating it would be so difficult to explain that consumers would not find it useful.<sup>129</sup>

After considering the comments, the Commission believes that the purported benefits to consumers of including the Wobbe number on CNG labels are speculative and do not exceed the costs to industry. If, as has been suggested, the Wobbe number is an indicator of heating value, then it should be correlated with methane content and thus indicated indirectly by disclosure of the percentage content of methane. Further, while the Wobbe index may be important to engine manufacturers and fuel producers as an important element of a fuel specification, CNG labels based on a Wobbe number could be confusing or misleading to consumers attempting to determine the relationship between the Wobbe number and actual engine performance. Accordingly, the Commission has determined not to propose requiring disclosure of the Wobbe number on CNG dispenser labels.

## 5. Additional Proposals for Final Rule

a. *Label size and format.* In the NPR, the Commission proposed that labels for non-liquid alternative fuels follow the same standardized size and format requirements as those for liquid alternative fuels under the Fuel Rating Rule,<sup>130</sup> and sought comment on this proposal.<sup>131</sup> Nine commenters addressed questions concerning the size and format of alternative fuel labels, and none opposed the proposals.

Seven commenters stated that non-liquid alternative fuels should follow the same size and format requirements as liquid alternative fuels under the

Fuel Rating Rule.<sup>132</sup> The reasons given for keeping the requirements the same were: promoting consistency,<sup>133</sup> keeping information simple so that consumers can easily understand the labels,<sup>134</sup> and fairness and equity.<sup>135</sup> SIGMA stated simply that it supported the proposed requirements and urged the Commission to adopt the proposed rule without change.<sup>136</sup>

Although section 406(a) does not specify size and format standards for alternative fuel labels, it directs the Commission "to establish uniform labeling requirements, to the greatest extent practicable." It also specifies that "[r]equired labeling under the rule shall be simple and, where appropriate, consolidated with other labels providing information to the consumer." In the NPR, the Commission proposed that the non-liquid alternative fuel labels not be consolidated with other mandatory labels or require otherwise duplicative disclosures.<sup>137</sup> Only one commenter addressed this issue, stating that consolidation would appear to provide no benefit and would only lead to public confusion.<sup>138</sup> After considering the comments, the Commission proposes that non-liquid alternative fuels labels follow the same standardized size and format requirements of the Fuel Rating Rule.<sup>139</sup> Further, to keep the labels uniform and simple, the Commission does not propose requiring any label consolidation.

b. *Substantiation, certification, and recordkeeping requirements.* An objective product claim carries with it a representation that the seller possessed and relied upon a reasonable basis for that claim.<sup>140</sup> When a seller does not expressly or impliedly state a certain level of support for a representation, the Commission assumes that consumers expect the seller to have a reasonable

basis for the claim.<sup>141</sup> Further, "a firm's failure to possess and rely upon a reasonable basis for objective claims constitutes an unfair and deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act."<sup>142</sup> The fuel dispenser labeling rule the Commission proposes would require that sellers possess adequate substantiation to ensure that the information on the labels is accurate and reliable, and; as required by section 406(a) of EPA 92, that the information can "reasonably enable the consumer to make choices and comparisons."

When products are sold in units, packaged or unpackaged, "labeling" normally is accomplished by disclosing information on the product packaging, on a label attached directly to the product, or marked directly on the product.<sup>143</sup> Most often, though not always, such labeling disclosures are added to the product or product packaging by the party producing the product. Items sold in bulk (such as gasoline or alternative fuels), on the other hand, cannot be labeled on individual or multiple unit packaging to ensure that the ultimate consumer sees the labeled information. The only practical method of ensuring that labeling information for such products reaches the consumer is to label the bulk product dispenser at the point of retail sale.

From a practical standpoint, retail sellers of alternative fuels are not in a position to determine the accuracy of the information to be disclosed about the specific fuel. It would be impractical, and probably more expensive to the consumer, to require retail sellers to test each delivery of a gaseous fuel or to test the electric vehicle fuel dispenser systems they use to determine the accuracy of the information they must disclose on labels on fuel dispensers. In making disclosures to consumers, retail sellers of alternative fuels, therefore, must rely on the accuracy of the information provided to them from gaseous fuel importers, producers, refiners and distributors, or from manufacturers and distributors of electric vehicle fuel dispenser systems.

<sup>140</sup> FTC Policy Statement Regarding Advertising Substantiation, 104 F.T.C. 839, 840. See *Thompson Medical*, 104 F.T.C. 786, 813.

<sup>141</sup> FTC Policy Statement Regarding Advertising Substantiation, 104 F.T.C. 839.

<sup>142</sup> See, e.g., Rule Concerning Disclosures of Information about Energy Consumption and Water Use for Certain Home Appliances and Other Products Required under the Energy Policy & Conservation Act ("Appliance Labeling Rule"), 16 CFR Part 305 (1994); Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation ("R-value Rule"), 16 CFR Part 460 (1994).

<sup>127</sup> RFA, G-5, 3.

<sup>128</sup> EMA (Supp.), G-21, 1-2.

<sup>129</sup> AGA/NGVC (Tr.), 43.

<sup>130</sup> Labels required by the Fuel Rating Rule are 3 inches wide by 2 1/2 inches long, with process black type on an orange background. 16 CFR 306.12 (1994).

<sup>131</sup> 59 FR 24014, 24021.

<sup>132</sup> AGA/NGVC, G-6, 8; API, G-25, 4 (provided that content requirements for non-liquid alternative fuels are similar to those for liquid alternative fuels in the Fuel Rating Rule, similar size and format labels are appropriate, consistent, and should be recognizable to consumers); Mobil, G-2, 4; NPGA, G-18, 4; RFA, G-5, 4; Sun, G-1, 2; Thomas BB, G-10, 2 (does not understand why non-liquid fuels should be treated differently than liquid fuels). AGA/NGVC and API did not state reasons for their comments.

<sup>133</sup> Mobil, G-2, 4; RFA, G-5, 4.

<sup>134</sup> Sun, G-1, 2.

<sup>135</sup> NPGA, G-19, 4.

<sup>136</sup> SIGMA, G-23, 1.

<sup>137</sup> 59 FR 24014, 24018.

<sup>138</sup> TVA, H-5.

<sup>139</sup> See section 309.17 of the text of the proposed labeling rule in section XI *infra*.

<sup>140</sup> *Thompson Medical Co.*, 104 F.T.C. 648, 813 (1984), *aff'd*, 791 F.2d 189 (D.C. Cir. 1986), *cert. denied*, 479 U.S. 1086 (1987).

The Commission believes that substantiation, certification, and recordkeeping requirements for importers, producers, refiners and distributors of gaseous alternative fuels, and manufacturers of electric vehicle fuel dispenser systems, and substantiation and recordkeeping requirements for retail sellers of non-liquid alternative vehicle fuels (including electricity) are necessary to ensure that the information posted on labels on retail fuel dispensers is accurate.<sup>144</sup> The Commission, therefore, proposes to include substantiation, certification, and recordkeeping requirements in the rule, similar to such requirements in the Fuel Rating Rule for sellers of liquid alternative fuels.

(1) *Substantiation.* The Commission's labeling proposals would require labeling disclosures only of the type of non-liquid alternative vehicle fuel (including electricity), and of the minimum molecular percent (a more accurate description than volume of the content of a gas) of the principal component of each gaseous alternative vehicle fuel and of specific, limited information about the output of the electric vehicle fuel dispenser system. Under the Commission's advertising substantiation doctrine, which requires sellers to have a reasonable basis to support material, objective claims, the Commission proposes requiring that importers, producers, and refiners of non-liquid alternative vehicle fuel (other than electricity) have a reasonable basis, consisting of competent and reliable evidence, that substantiates the minimum mole percent of the principal component that retailers must disclose on fuel dispenser labels. For the minimum mole percent content of methane (the principal component) in CNG, the Commission proposes requiring that the reasonable basis be

tests conducted according to ASTM D 1945-81.<sup>145</sup> For the minimum mole percent content of hydrogen (the principal component) in hydrogen gas, the Commission proposes requiring that the reasonable basis be tests conducted according to ASTM D 1946-90.<sup>146</sup> These ASTM documents include test procedures, developed through the ASTM consensus process, to determine the chemical composition of CNG and hydrogen, respectively, including the mole percent of methane in CNG and of hydrogen in hydrogen gas.<sup>147</sup>

For the minimum mole percent content of any other component that importers, producers, or refiners wish to certify, the proposed rule would not specify the test procedure they must use, but only that they have a reasonable basis, consisting of competent and reliable evidence, to substantiate the claim. The proposed rule would not require that importers, producers, or refiners meet particular material specifications or standards for the common name they use to describe the non-liquid alternative vehicle fuel (other than electricity) they distribute, but that they have a reasonable basis, consisting of competent and reliable evidence, to substantiate the common name or identifier they use. Similarly, manufacturers of electric vehicle fuel dispenser systems would be required to have a reasonable basis, consisting of competent and reliable evidence, to substantiate the information retail sellers must post on labels on the electric vehicle fuel dispensers.

Distributors and retail sellers could rely on the certifications they receive, as discussed in section III.B.5.2 *infra*, so their burden would be minimal. Distributors and retailers would not

need to make the actual determinations unless they alter the fuel they receive before reselling it.<sup>148</sup>

For public electric vehicle fuel dispenser systems, the information the Commission proposes requiring to be disclosed can be measured using standard measuring devices or procedures. Therefore, accurate measurements made using standard electric industry procedures that are recognized as competent and reliable would be sufficient to serve as the required reasonable basis.

Currently, there is not sufficient record evidence for imposing specific, nationwide, minimum material standards or specifications for the composition of CNG or hydrogen gas.<sup>149</sup> Neither ASTM nor any other standards-setting entity has developed and adopted consensus material specifications for these non-liquid (gaseous) alternative fuels. Nor do federal specifications currently exist. As previously discussed, the state of California has issued minimum material specifications for both CNG and hydrogen gas sold in California.<sup>150</sup> These specifications require determination of the minimum mole percent composition of the principal component of these gaseous alternative fuels according to the specific ASTM test procedures that the Commission proposes to require as substantiation for the proposed disclosures.<sup>151</sup> Although the Commission could require that non-liquid alternative fuels meet the California minimum material specifications, there is insufficient evidence on the record for doing so. Further, in the absence of more extensive information, which may not yet exist, mandating that non-liquid (gaseous) alternative fuels meet any particular minimum material standards specifications could have unforeseen

<sup>145</sup> See note *infra*.

<sup>146</sup> *Id.*

<sup>147</sup> The Fuel Rating Rule did not require that specific ASTM test methods be used to satisfy the Rule's reasonable basis standard for liquid alternative fuels because existing ASTM test methods were undergoing verification review to determine whether they would be appropriate for use in establishing standards for the liquid alternative fuels. Further, the Commission was informed that other test methods were being developed that might serve equally well as part of a liquid alternative fuel standard. On the other hand, the Commission understands that the ASTM test methods it proposes requiring as a reasonable basis for determining the minimum molecular percentages of the principal components of CNG and hydrogen have been ASTM test methods for many years and have been recognized as competent and reliable procedures. Further, the Commission understands that no other test methods that could be used to make these determinations have been proposed to the California Air Resources Board or are under development by any standards-setting organizations. If additional test methods are developed in the future, the Commission will consider whether to include them among the required test methods.

<sup>148</sup> See §§ 309.13(c) and 309.15(c) of the text of the proposed rule in section XI *infra*.

<sup>149</sup> See AMI, G-3, 1; CEC, H-8, 6 (not aware of any existing, adequate and generally accepted standards for disclosures for alternative fuels).

<sup>150</sup> See note *supra*.

<sup>151</sup> The ASTM test procedures referenced in the California specifications are: (1) for measuring the mole percent of methane in CNG—ASTM D 1945-81; (2) for measuring the mole percent of hydrogen in hydrogen gas—ASTM D 2650-88. *Id.* According to ASTM representatives, ASTM D 1945-91 (placed on the record as document number B-54) has superseded ASTM D 1945-81 and ASTM D 1946-90 (placed on the record as document number B-55) has superseded ASTM D 2650-88. The California specifications also cite specific test procedures for measuring the mole percent of other components of CNG and hydrogen. The California specifications state that other test procedures may be used following a determination by the Executive Officer of the California Air Resources Board that they produce results equivalent to the results obtained with the referenced test procedures.

<sup>144</sup> The Commission stated in the NPR that it believed that harmonizing labeling requirements for non-liquid and liquid alternative fuels, when practicable, would be appropriate. However, the Commission stated that it believed that requiring retailers to post consistent with ratings certified to them and to maintain records, as is required for liquid alternative fuels in the Fuel Rating Rule, would be beyond the scope of the Commission's mandate under section 406(a) of EPA 92 (59 FR 24014, 24018 n. 133). Upon further consideration, and in light of the discussion in the text *supra*, the Commission reconsidered that position and has determined to propose requiring substantiation, certification, and recordkeeping requirements for non-liquid alternative fuels like those for liquid alternative fuels in the Fuel Rating Rule. The Commission believes that the proposed requirements are justified because they are rationally related to the establishment of "uniform labeling requirements" that provide important information to consumers. Interested parties are invited to address the proposed requirements in their written comments in response to this SNPR.

adverse anti-competitive, environmental, or vehicle performance effects.<sup>152</sup> However, because it is important that sellers base objective disclosures on uniform measurements when recognized and accepted uniform measurement procedures are available, and because ASTM has issued test procedures to measure the minimum mole percent of the principle components of CNG and hydrogen, the Commission has determined to propose requiring use of the ASTM test procedures to substantiate those disclosures.

The Commission's approach to requiring substantiation testing, without specifying a particular test method, for components other than the principle component allows sellers to rely on existing industry test procedures if they are reasonable and yield accurate results. For example, the California specifications list specific ASTM procedures to be used to determine the mole percent of various components of CNG and hydrogen, in addition to the methane content of CNG and the hydrogen content of hydrogen gas. The Commission proposes to accept, but not require, use of the ASTM test procedures cited in the California specifications as the required reasonable basis for voluntary disclosure of additional components of CNG and hydrogen.

Although the Commission has decided not to propose requiring that non-liquid alternative fuels conform to any specific material specification, the Commission's proposed requirement that marketers disclose the principal component of each fuel should encourage the industry to develop uniform material specifications or standards in consensus organizations for these fuels to ensure the uniform quality of the fuels in the marketplace. The development of material specifications or standards for non-liquid (gaseous) alternative fuels should help facilitate acceptance of these fuels.

The proposed requirements are consistent with the substantiation requirements for sellers of liquid alternative fuels under the Fuel Rating Rule.<sup>153</sup>

(2) *Certification.* The Commission proposes requiring that importers, producers, refiners, and distributors of non-liquid alternative fuels (other than electricity), and that manufacturers of

electric vehicle fuel dispensing systems certify to others to whom they distribute the information that retailers must post on fuel dispensers.<sup>154</sup> Importers, producers, and refiners of non-liquid alternative fuels (other than electricity) would be required to certify to distributors consistent with their determination of the minimum mole percent of the fuel's major component, and of any additional component they wish to disclose. Manufacturers of electric vehicle fuel dispensing systems would be required to certify to distributors and/or retailers the information retailers would be required to disclose on labels on fuel dispensers. Distributors of non-liquid alternative fuels (other than electricity) and of electric vehicle fuel dispensing systems would be required to certify to retailers consistent with the certification they received.<sup>155</sup>

Importers, producers, and refiners of non-liquid alternative fuel (other than electricity) could make the certification in either of two ways:

(a) Include with each transfer a delivery ticket or other paper (such as, an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket or any other written proof of transfer). The delivery ticket or other paper must contain at least the importer's, producer's, or refiner's name, the name of the person to whom the non-liquid alternative fuel (other than electricity) is transferred, the date of the transfer, the common name of the fuel and the minimum mole percent of the fuel's major component, and of any additional component the producer or importer wishes to disclose.

(b) Give the person to whom the fuel is transferred a letter or written statement, including the date, the producer's or importer's name, the name of the person to whom the fuel is transferred, the common name of the fuel, and the minimum mole percent of the fuel's major component, and of any additional component the producer or importer wishes to disclose. The letter or written statement would be effective until the importer, producer, or refiner transfers non-liquid alternative vehicle fuel (other than electricity) with a lower percentage of the major component, or of any other component claimed. At that time, the importer, producer, or refiner

would have to certify the new information about the fuel with a new notice.

Distributors of non-liquid alternative fuel (other than electricity) would be required to make the certification in each transfer to anyone who is not a consumer. Distributors could make the required certification by:

(a) Using a delivery ticket or other paper with each transfer, as outlined for importers and producers in item (a), above, or by using a letter of certification, as outlined for importers, producers, and refiners in item (b), above.

(b) Using either a letter or a delivery ticket or other paper when transferring to a common carrier. When distributors receive non-liquid alternative vehicle fuel (other than electricity) from a common carrier, the distributors also must receive from the common carrier a certification of information required to be disclosed on the label on the retail fuel dispenser, either by letter or on a delivery ticket or other paper.

Manufacturers of electric vehicle fuel dispensing systems would be required to make the certification in each transfer of such systems. Manufacturers could do so in either of two ways:

(a) Manufacturers could make the required certification by including a delivery ticket or other paper with each transfer of an EV fuel dispensing system. It could be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof of transfer. It would be required to contain at least the manufacturer's name, the name of the person to whom the EV fuel dispensing system is transferred, the date of the transfer, the model number or other identifier of the EV fuel dispensing system, and the information required to be disclosed on the retail fuel dispenser label.

(b) Manufacturers could make the required certification by placing clearly and conspicuously on the EV fuel dispensing system a permanent legible marking or permanently attached label that discloses the manufacturer's name, the model number or other identifier of the EV fuel dispensing system, and the information required to be disclosed on the retail fuel dispenser label. Such marking or label would have to be located where it can be seen after installation of the EV fuel dispensing system. The marking or label would be deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking. This marking or label would have to be in addition to, and not as a substitute for, the label

<sup>152</sup> An analysis of the California material specifications also indicates that, to ensure fuel quality and proper automobile performance, disclosing minimum percentage of the principal component of the fuel would be important and helpful.

<sup>153</sup> 16 CFR 306.5(b) (1994).

<sup>154</sup> See sections 309.10 and 309.11 of the text of the proposed labeling rule in section XI *infra*.

<sup>155</sup> See section 309.13 of the text of the proposed labeling rule in section XI *infra*. If distributors blend fuels, § 309.13(c) of the proposed rule would require them to substantiate the minimum percentage of the principal component according to the requirements of § 309.10, and certify that information to their non-consumer customers.

required to be posted on the public EV fuel dispenser at the point of retail sale.

Distributors of electric vehicle fuel dispensing systems would be required to make the certification in each transfer. Distributors could do so in either of two ways:

(a) Using a delivery ticket or other paper with each transfer, as outlined for manufacturers of electric vehicle fuel dispensing systems in item (a) *supra*.

(b) Using the permanent marking or label permanently attached to the system by the manufacturer, as outlined for manufacturers of electric vehicle fuel dispensing systems in item (b) *supra*.

The proposed requirements are consistent with the certification requirements for sellers of liquid alternative fuels under the Fuel Rating Rule.<sup>156</sup>

(3) *Recordkeeping*. The Commission proposes requiring that importers, producers, and refiners of non-liquid alternative fuels (other than electricity) maintain records of the tests performed by or for them that they rely upon as their required reasonable basis for their certifications.<sup>157</sup> The Commission likewise proposes requiring that manufacturers of electric vehicle fuel dispensing systems maintain records of the tests or measurements performed by or for them, or of other data or records, that they rely upon as their required reasonable basis for their certifications.<sup>158</sup> The Commission also proposes requiring that distributors and retailers of non-liquid alternative fuels (including electricity) maintain records consisting of the certifications they receive from importers, producers, refiners, or distributors of non-liquid alternative fuels (other than electricity), and that distributors of electric vehicle fuel dispensing systems maintain records consisting of the certification they receive from manufacturers or distributors of the systems.<sup>159</sup> Like the Fuel Rating Rule, the proposed rule would require that these records be kept for one year.

The proposed requirements are consistent with the recordkeeping requirements for sellers of liquid alternative fuels under the Fuel Rating Rule.<sup>160</sup>

*c. Effective date*. In the NPR, the Commission proposed requiring that the non-liquid alternative fuels labeling requirements become effective 90 days after publication of a final rule in the

**Federal Register**, and sought comment on that proposal.<sup>161</sup> Nine commenters addressed this issue either directly or by implication.<sup>162</sup>

Four commenters stated that the proposed time period gave sufficient time for covered parties to comply with the proposed requirements.<sup>163</sup> NPGA stated that the 90-day period was not sufficient. It suggested a period of at least six months after publication of the final rule would be necessary because information must be collected from various fuel suppliers or wholesalers, the information must be placed in a format that meets standards established by the regulations, and layouts must be prepared in label form and distributed for use.<sup>164</sup> Thomas BB questioned the sufficiency of 90 days, but stated that it would depend on the content of the final rule.<sup>165</sup>

Section 406(a) of EPA 92 requires the Commission to issue the final labeling rules within one year of publication of the notice of proposed rulemaking, but does not specify when the rules shall become effective. In developing this proposal, the Commission has considered how best to balance consumers' needs for comparative information with industry's need for a reasonable period of time to come into compliance. After considering the comments, the Commission believes that the proposed effective date (i.e., 90 days after publication in the **Federal Register**) is reasonable.<sup>166</sup>

<sup>161</sup> 59 FR 24014, 24017, 24021.

<sup>162</sup> SIGMA, G-23, 1 (supported all the Commission's proposals and urged the Commission to adopt the proposed rule without change); AGA/NGVC, G-6, 8 (expressed no opinion on proposed time period, but stated it would check with members that own fuel stations to ascertain if the compliance period would be too short); Phillips 66, G-15, 2 (Phillips 66 did not respond directly to the time period for the rule to become effective, but referred to separate comments submitted by NPGA and API, which stated different opinions; Phillips 66 did not specify which comment it supported on this issue.).

<sup>163</sup> API, G-25, 4 (90 days is sufficient, provided the effective date, size, and format requirements for them are similar to those contained in the Fuel Rating Rule for liquid fuels); Fxible, G-12, 2 (90 days is sufficient if the requirements for commercial vehicles are made according to the proposals in the ANPR; if the requirements were different, they would have to be reviewed to determine how long it would take to comply); Mobil, G-2, 4 (provided effective date and labeling requirements are consistent with the Fuel Rating Rule for liquid alternative fuels, there should not be a problem with implementation); RFA, G-5, 4 (90 days is sufficient because the number of outlets affected is small and labels would be printed in small quantities on a local basis or provided to retailers and their fuel suppliers).

<sup>164</sup> NPGA, G-18, (comment) 4.

<sup>165</sup> Thomas BB, G-10, 2 (will take considerably longer to establish national standards for some fuels).

<sup>166</sup> The effective date of the final amendments adding liquid alternative fuels to the Fuel Rating

*d. Periodic updating of labels*. In the NPR, the Commission did not propose a specific timetable for future reviews of the final labeling rules. The Commission, however, explained that section 406(a) of EPA 92 requires the Commission to update its labeling requirements "periodically." Three commenters addressed the need to update the final rules periodically.

API encouraged the Commission to review the rule, particularly after private, voluntary consensus standards organizations develop fuel specifications for alternative fuels. API also encouraged the Commission to consider reviewing the rule as new alternative fuels enter the marketplace. API did not suggest a specific timetable for periodic reviews.<sup>167</sup> CEC suggested that the Commission may have to update its labeling requirements as electric vehicle technology advances, but likewise did not recommend a specific timetable.<sup>168</sup> TVA commented that the Commission should update labeling disclosures only when necessary to reflect practical developments in technology. It also stated that a new label should indicate that it supersedes the previous label.<sup>169</sup>

As required by section 406(a) of EPA 92, the Commission intends to conduct reviews to update the rule periodically to take into consideration relevant developments, such as when DOE designates new non-liquid alternative fuels. In addition, the Commission's ongoing regulatory review process schedules all rules and guides for review at least once during every ten-year period. Because the Commission cannot predict when new relevant developments may occur, the Commission is not otherwise proposing a specific timetable for future reviews in the final rule.

### C. Labeling Requirements for AFVs

#### 1. Scope of the AFV Labeling Requirement

In its NPR, the Commission proposed that original equipment manufacturers ("OEMs") and AFV conversion companies affix, and AFV dealers maintain, standard labels on new AFVs sold or offered for sale to consumers.<sup>170</sup> The Commission further proposed that the term "consumer," which is not defined in EPA 92, be defined as a

Rule was less than 90 days after publication of the final rules in the **Federal Register**. The final rules were published on August 3, 1993. They became effective on October 25, 1993, as required by EPA 92. 58 FR 41356.

<sup>167</sup> API, G-25, 9.

<sup>168</sup> CEC, H-8, 5-6.

<sup>169</sup> TVA, H-5, 1.

<sup>170</sup> 59 FR 24014, 24018.

<sup>156</sup> 16 CFR 306.6, 306.8 (1994).

<sup>157</sup> See § 309.12 of the text of the proposed labeling rule in section XI *infra*.

<sup>158</sup> *Id.*

<sup>159</sup> See §§ 309.14 and 309.16 of the text of the proposed labeling rule in section XI *infra*.

<sup>160</sup> 16 CFR 306.7, 306.9, 306.11 (1994).

person (i.e., an individual, corporation, or any other business organization) purchasing a new AFV from a dealer or AFV conversion company.<sup>171</sup> These proposed requirements were derived in part from existing regulations regarding posting of EPA fuel-economy labels<sup>172</sup> and were intended to exclude two sales categories (i.e., used AFV sales and special orders directly from manufacturers) from the scope of the Commission's AFV labeling requirement.<sup>173</sup>

Nineteen commenters addressed the proposed scope of the AFV labeling requirements. Two of the nineteen indicated general support for the Commission's labeling proposal but did not address this specific issue.<sup>174</sup> One other commenter supported the Commission's definition of the term "consumer" as proposed.<sup>175</sup> The remaining sixteen addressed one or more issues pertaining to this aspect of the Commission's proposal, as discussed below.

a. *Covered AFVs.* Several commenters addressed whether the Commission's labeling requirements should apply to all AFVs, as that term is defined in EPA 92. As defined by that statute, an AFV is either "a dedicated vehicle or a dual fueled vehicle."<sup>176</sup> As further defined, a "dedicated vehicle" means an automobile (or other self-propelled vehicle), designed for transporting persons or property on a street or highway, that operates solely on alternative fuel.<sup>177</sup> Similarly, a "dual fueled vehicle" is an automobile (or other self-propelled vehicle), designed for transporting persons or property on a street or highway, that is capable of operating on alternative fuel and on gasoline or diesel fuel.<sup>178</sup> As such, the

statutory definition of an "AFV" includes tour buses, transit buses, heavy-duty commercial trucks, and large motor homes.

Regarding the AFVs covered by the Commission's labeling requirements, four commenters indicated that the labeling requirements should apply to all AFVs, so that consumers of those vehicles have access to the same information.<sup>179</sup> Nine commenters, however, suggested that the Rule's scope could reasonably be limited in a manner consistent with EPA 92's mandate and purpose. For example, several commenters supported the Commission's proposal to limit the Rule's scope to AFVs obtained from dealers or AFV conversion companies (i.e., not directly from the manufacturer as a special order). Those commenters stated that consumers making special orders would likely have sufficient knowledge of available fuel alternatives and would need more detailed and vehicle-specific information than could be provided on a standardized label.<sup>180</sup> They also stated that specially ordered AFVs were typically manufactured after the order had been placed, so that the consumer would not actually see the vehicle until delivery.<sup>181</sup> Requiring the posting of cost-benefit labels on such vehicles thus would not help consumers.

Other commenters suggested a different approach. Those commenters stated that the Commission's AFV labeling requirements should exclude from its scope AFVs with gross vehicle weight ratings ("GVWR")<sup>182</sup> over 8,500 lbs. (i.e., medium and heavy duty AFVs). EMA stated that AFVs over 8,500 lbs. GVWR should be excluded because consumers considering such vehicles make decisions based on extensive evaluations of more factors and information than a simple label could provide.<sup>183</sup> Flexible stated that consumers considering heavier commercial vehicles have usually

reviewed published data on features, compared specific vehicle types, and studied life-cycle cost studies before placing orders. They thus have no need for "consumer" labeling.<sup>184</sup> AAMA stated that those vehicles are typically manufactured after their purchase by commercial vehicle buyers who are well informed about pertinent costs and benefits.<sup>185</sup> EPA also noted that its fuel economy requirements (disclosing fuel economy information in window stickers) do not apply to vehicles over 8,500 lbs. GVWR.<sup>186</sup>

As noted previously, the Commission must issue uniform labeling requirements only "to the greatest extent practicable."<sup>187</sup> In developing this revised proposal the Commission has considered the practicality and appropriateness of including all AFVs within the scope of its labeling requirements. Including all such vehicles might help educate consumers about the general availability of AFVs of all sizes. However, the record appears to indicate that consumers considering vehicles over 8,500 lbs. GVWR would not likely make choices and comparisons based on the cost-benefit information contained in a simple label. The Commission also considered including all AFVs (regardless of weight) and developing different label formats tailored to the apparently different needs of light and heavy-duty AFV consumers. This also did not appear to be practical because heavier vehicles are typically custom ordered. While these evaluations may change in the future, for now at least it seems likely that for consumers considering such vehicles, disclosures in a labeling format may not be appropriate, useful, or timely. As a result, the Commission has tentatively determined that, at the present time, AFVs over 8,500 lbs. GVWR will not be included within the scope of its AFV labeling requirements.

To implement this tentative determination, the Commission proposes to include a definition of "covered vehicles" (i.e., in substance, AFVs under 8,500 lbs. GVWR), in the

<sup>171</sup> Id. at 24018 n.138.

<sup>172</sup> Id. at 24018 n.136. See 40 CFR 600.306-86(a) (1993).

<sup>173</sup> 59 FR 24014, 24018 n.138.

<sup>174</sup> EIA/EEU-USD, H-2, 1; Texas RRC, H-3, 1.

<sup>175</sup> AGA/NGVC stated that the Commission's proposed definition was "a reasonable interpretation of the statute" because industry "can target and educate specialty markets and their consumers." AGA/NGVC, G-6, 11-12. In its supplemental written comment, AGA/NGVC addressed the issue of aftermarket conversions. See *infra* note 196 and accompanying text.

<sup>176</sup> 42 U.S.C. 13211(3) (Supp. IV 1993).

<sup>177</sup> See 42 U.S.C. 13211(6) (Supp. IV 1993) (a "dedicated vehicle" is either a "dedicated automobile," as defined in 15 U.S.C. 2013(h)(1)(C) (Supp. IV 1993), or a "motor vehicle," as defined in 42 U.S.C. 7550(2), other than an automobile, that operates solely on alternative fuel).

<sup>178</sup> See 42 U.S.C. 13211(8) (Supp. IV 1993) (a "dual fueled vehicle" is either a "dual fueled automobile," as defined in 15 U.S.C. 2013(h)(1)(D) (Supp. IV 1993), or a "motor vehicle," as defined in 42 U.S.C. 7550(2), other than an automobile, that is capable of operating on alternative fuel and on gasoline or diesel fuel).

<sup>179</sup> Boston Edison (Supp.), G-26, 13; NACAA (Tr.), 132; NAFA (Tr.), 123, 134; TVA, H-5, 1.

<sup>180</sup> CEC, H-8, 11; ETC, G-24, 5; Nebraska EO, H-9, 1. Flexible stated that the Rule's scope should be limited to vehicles operated by the general public. Flexible, G-12, 2.

<sup>181</sup> GM (Tr.), 127-128 ("[P]utting a label on a vehicle after it's been built is already a done deal because all those decisions had to be made at the ordering.").

<sup>182</sup> EPA defines GVWR as a vehicle's actual weight (including all standard and optional equipment and fuel) plus 300 pounds. See 40 CFR 86.082-2 (1993) (defining "GVWR," "loaded vehicle weight," and "vehicle curb weight.").

<sup>183</sup> EMA, G-21, 2, 3-4, 7. (Tr.), 123. EMA cited examples where the considerations relevant to ordering a heavy-duty AFV were summarized in an OEM's 25-page sales brochure and a 400-page truck data book. EMA (Supp.), G-21, 2-3.

<sup>184</sup> Flexible (Supp.), G-12, 1-3 (window stickers should be for vehicles purchased for personal use and from dealer lots, i.e., under 8,500 lbs. GVWR). (Tr.), 134 (rule should be limited to passenger-type vehicles).

<sup>185</sup> AAMA, G-7, 3-4. (Tr.), 124 (purchasing decision "will already have been made long before [purchaser] walks into the showroom and sees the label."). Chrysler and Ford supported AAMA's position that these vehicles should be excluded from the scope of the Commission's AFV labeling requirements. Chrysler, G-13, 1; Ford, G-14, 1.

<sup>186</sup> EPA (Tr.), 122; 40 CFR 600.002-85(4)(iii) (1993).

<sup>187</sup> 42 U.S.C. 13232(a) (Supp. IV 1993).

proposed rule.<sup>188</sup> The Commission derived this definition from EPA 92's definition of the term "light duty motor vehicles," a term given special significance by that statute.<sup>189</sup> EPA 92's definition of that term references two vehicle classifications used by the Clean Air Act (light duty trucks or light duty vehicles) "of less than or equal to 8,500 pounds [GVWR]."<sup>190</sup> The Clean Air Act<sup>191</sup> in turn refers to existing EPA definitions of both vehicle classifications.<sup>192</sup> Thus, the proposed definition of "covered vehicle" basically encompasses the same category of vehicle referenced in EPA 92's fleet acquisition requirements.

b. *AFV manufacturers and conversion companies.* As noted previously, in its

<sup>188</sup> See proposed rule section 309.1(f) (defining "covered vehicle"). The term "covered vehicle" was derived from the Energy Policy and Conservation Act's ("EPCA") use of the term "covered product." See 42 U.S.C. 6291(a)(2), 6292(a) (statute's scope defined in terms of enumerated consumer products); 16 CFR 305.2, 305.3 (1994) (same for Commission's Appliance Labeling Rule implementing EPCA).

<sup>189</sup> Three of EPA 92's five "major" alternative-fuel provisions impose minimum vehicle-acquisition requirements on designated entities (i.e., the Federal government; alternative fuel providers; and other non-Federal fleets). H. Rep. No. 102-474(I), 102d Cong., 2d Sess. 137, reprinted in 1992 U.S.C.A.N. 1954, 1960. For alternative fuel providers and other non-Federal fleets, the vehicles covered by those mandates are "light duty motor vehicles." See 42 U.S.C. 13251 (Supp. IV 1993) (mandatory acquisition requirement for alternative fuel providers); 42 U.S.C. 13257 (Supp. IV 1993) (contingent acquisition requirement for other non-Federal fleet operators).

The Federal fleet is required to acquire "light duty [AFVs]," a term not defined in EPA 92, instead of "light duty motor vehicles." See 42 U.S.C. 13212 (Supp. IV 1993) (mandatory acquisition requirement for Federal government). Neither the statute nor its legislative history suggests that those terms have different meanings and the discrepancy may have been inadvertent. The Commission need not resolve the matter, however, because it seems clear that the intent was to tailor the Federal fleet's acquisition requirement to a certain category of AFVs.

<sup>190</sup> 42 U.S.C. 13211(11) (Supp. IV 1993) ("The term 'light duty motor vehicle' means a light duty truck or light duty vehicle, as such terms are defined under section 216(7) of the Clean Air Act (42 U.S.C. 7550(7)), of less than or equal to 8,500 pounds [GVWR].").

<sup>191</sup> 42 U.S.C. 7550(7) (the terms "light duty truck" and "light duty vehicle" have the meaning provided in regulations promulgated by the [EPA] Administrator and in effect as of the enactment of the Clean Air Act Amendments of 1990.").

<sup>192</sup> A light duty truck is defined as "[a]ny motor vehicle rated at 8,500 pounds GVWR or less which is (sic) a vehicle curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons, or (3) Available with special features enabling off-street or off-highway operation and use." 40 CFR 86.082-2 (1993). A light duty vehicle is defined as "a passenger car or passenger car derivative capable of seating 12 passengers or less." *Id.*

NPR the Commission proposed that its AFV labeling requirements apply to AFV manufacturers and conversion companies.<sup>193</sup> The Commission did not further specify, however, the extent to which such entities would be required to comply with its labeling proposal. In response, several commenters addressed the circumstances under which either entity should be included within the scope of the AFV labeling requirements. As to AFV manufacturers, the commenters agreed that all vehicles designed and assembled by OEMs to operate on alternative fuel should be included within the scope of the Commission's AFV labeling requirements.<sup>194</sup>

As to conversion companies, however, some commenters suggested that the labeling requirements distinguish between two different categories of conversions: whether the vehicle is converted to alternative fuel before or after it is delivered to the first consumer. For example, AGA/NGVC and ETC stated that conversions performed *before* the vehicle is delivered to a first consumer should be included within the scope of the AFV labeling requirement.<sup>195</sup> These conversions bear similarities to OEM AFVs because in both circumstances the vehicles are configured to alternative fuel before delivery to the first consumer. Consumers considering these converted AFVs would thus have equal need for comparative information as consumers considering other "new" vehicles.

As to the second category, those commenters stated that companies performing conversions *after* the vehicle is delivered to a consumer (so called "aftermarket conversions") should be excluded from the AFV labeling requirements because consumers would have already been educated about the costs and benefits of alternative fuels.<sup>196</sup> Four other commenters addressed this category. Three stated that aftermarket conversions should be covered because

<sup>193</sup> 59 FR 24014, 24018. A conversion company reconfigures the fuel system of an existing vehicle to permit operation on alternative fuel.

<sup>194</sup> See, e.g., Boston Edison (Supp.), G-26, 13; ETC, G-24, 4.

<sup>195</sup> AGA/NGVC (Supp.), G-6 ("We agree with the FTC and others that vehicles that are converted prior to being delivered to the first time buyer should be labeled in the same fashion as other 'new' vehicles."); ETC, G-24, 4 ("All vehicles that are considered 'new' vehicles, regardless of whether they are sold by an original equipment manufacturer or a converter or upfitter, should be subject to the labeling requirement."). Commenters responding to the Commission's ANPR were in similar agreement. See 59 FR 24014, 24016 nn. 53, 54 and accompanying text.

<sup>196</sup> AGA/NGVC (Supp.), G-6, 3-4, (Tr.), 231-232; ETC, G-24, 4.

the labeling requirements should apply to all AFVs.<sup>197</sup> NPGA stated that aftermarket conversions should be treated in a separate rulemaking proceeding because "circumstances surrounding the majority of aftermarket conversions \* \* \* are so different from the vehicles equipped by [OEMs] to operate on an alternative fuel."<sup>198</sup>

The intent of the Commission's proposal (as it applied to AFV conversion companies) was to address what the Commission understood was a significant segment of the AFV industry. DOE has noted that: "Because of the limited availability and selection of [OEM] vehicles, conversions are providing a transition to the time when automakers produce more [AFVs] for public sale."<sup>199</sup> As a result, "[t]he demand for vehicles meeting the [clean-fuel] standards will presumably grow, thus increasing the conversion market share for companies capable of producing large numbers of high-quality converted vehicles."<sup>200</sup> Among the factors creating such a demand are acquisition requirements for centrally fueled fleets contained in the 1990 Clean Air Act Amendments ("CAAA").<sup>201</sup> Those requirements "may be met through the conversion of existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles \* \* \*."<sup>202</sup> Interests affected by those mandates, as well as others interested in achieving the clean-air benefits of driving AFVs, may therefore find an incentive to convert existing vehicles to alternative fuel. The Commission therefore believes that it should address this issue in this proceeding to the greatest extent practicable.

As noted, AGA/NGVC and ETC suggested that vehicles converted to alternative fuel *after* being acquired by consumers should be excluded from the AFV labeling requirements because consumers considering conversion of existing vehicles would not benefit from a "labeling" requirement. Accordingly, in developing this revised proposal the Commission has considered the practicality and appropriateness of including this category within the scope of its AFV labeling requirements. The Commission notes that section 406 does

<sup>197</sup> Boston Edison (Supp.), G-26, 13; NAFA (Tr.), 130 (the same information available from manufacturers should be available from conversion companies); TVA, H-5, 1.

<sup>198</sup> NPGA, G-18 (Supp.), 2.

<sup>199</sup> B-3, inside front cover.

<sup>200</sup> 58 FR 32474, 32494, June 10, 1993.

<sup>201</sup> The CAAA's acquisition requirements are in addition to similar requirements, described *infra* section III(C)(1)(c), imposed by EPA 92.

<sup>202</sup> 42 U.S.C. 7587(a).

not address the issue of AFV conversions, and that including such vehicles could help consumers compare different alternative fuels and conversion systems.

However, the Commission believes that the circumstances surrounding such conversions may make such a requirement impractical or unnecessary.<sup>203</sup> For example, the Commission understands that some consumers convert their vehicles themselves without utilizing the services of a conversion installation company. Further, consumers relying on conversion companies to perform the necessary reconfiguration will presumably be evaluating which alternative fuel to which their vehicle should be converted. In those circumstances, consumers would not likely make such decisions based on information contained in a simple label. Companies performing conversions, at a consumer's request, would have nothing to label until the consumer had already decided to do a conversion, and labeling the vehicle post-conversion would not be helpful. Further, as noted, requiring disclosure other than in a labeling format may be beyond the scope of the Commission's authority under EPA 92.<sup>204</sup> The Commission also finds that requiring conversion companies to disclose objective information as to comparative factors will likely be problematic because such information can vary with the vehicle's condition.<sup>205</sup>

In any event, the Commission notes that DOE has addressed conversions of existing vehicles in its consumer information brochure.<sup>206</sup> Some of the information contained in that brochure is general (e.g., electric vehicle conversions "are available in larger metropolitan areas. Contact OEM dealer for qualified converter and warranty information"),<sup>207</sup> while some is more specific and objective. For example, the brochure notes that converting an existing conventional-fueled vehicle to CNG "costs about \$2,700 to \$5,000 per vehicle."<sup>208</sup> Given the apparent impracticalities surrounding a

requirement for aftermarket alternative-fuel conversions, and the availability of pertinent information in DOE's brochure, the Commission intends to exclude from its AFV labeling requirements situations where conventional fueled vehicles are converted to alternative fuel after being acquired by consumers. The proposed rule thus imposes no requirements on conversion companies to label such vehicles.<sup>209</sup>

The Commission also has considered whether vehicles converted to alternative fuel prior to their acquisition by consumers (e.g., after a gasoline powered vehicle has been fully assembled) should be included within the scope of the AFV labeling requirements. As noted, section 406(a) does not expressly exclude such vehicles from its scope and the Commission is aware of no reason why such vehicles should be so excluded. Accordingly, the Commission proposes to include such vehicles within the scope of its AFV labeling requirements.

The Commission has determined, however, that its treatment of the entity responsible for such a labeling requirement (i.e., the AFV conversion company) needs further refinement. In developing this revised labeling proposal, the Commission took particular note of EPA regulations addressing this subject issued after publication of the Commission's NPR. Those regulations implemented a provision of the 1990 CAAA deeming that "person[s] who convert conventional vehicles to clean-fuel vehicles" are "manufacturers," and thus responsible for complying with some or all of EPA's certification, production, line testing, in-use testing, warranty, and recall requirements.<sup>210</sup>

In the preamble announcing those regulations, EPA noted that two entities could be considered the "person who converts": the person who *installs* the conversion kit (i.e., the hardware converting the vehicle to alternative fuel), or the person who *manufactures* the conversion kit.<sup>211</sup> After considering the advantages and disadvantages of assigning liability to either entity, however, EPA concluded that assigning liability strictly to either entity was not appropriate. Instead, it determined it

should assign liability based on which party was in the best position to be familiar with pertinent vehicle-performance characteristics. Interpreting its own regulations, EPA determined that the entity best suited to comply with these requirements was the entity (kit installer, manufacturer, or other) who had applied for and received a certificate of conformity that the vehicle meets appropriate EPA emission standards.<sup>212</sup> Based on public comment received during that proceeding, EPA anticipated that in most cases the kit manufacturer would be the certifying party because this entity would be in the best position to perform the required certification testing.<sup>213</sup> Accordingly, EPA further expected that its regulations would encourage certifiers to develop oversight programs and enter into indemnification agreements with installers to insure that installations were performed properly.<sup>214</sup>

Because harmonizing regulatory approaches, when practicable, is appropriate and desirable, the Commission is basing its approach to determining which entities are responsible for complying with its AFV labeling requirements on EPA's regulations addressing the same issue. The Commission has determined that it is appropriate to designate the certifier as being responsible for compliance with these requirements because that entity will be in the best position to know the vehicle's performance attributes. The Commission also expects that certifiers would take similar steps to insure compliance with this revised labeling proposal, such as developing oversight programs and entering into indemnification agreements with installers to insure that accurate labels were posted as required.

Under the Commission's revised AFV labeling proposal, the entity responsible for complying with its labeling requirements for new covered

<sup>212</sup> Fleet Standards Rule, 59 FR 50042, 50062. Implementing that determination will provide that:

"The clean-fuel vehicle aftermarket conversion certifier shall be considered a manufacturer for purposes of Clean Air Act sections 206 and 207 and related enforcement provisions, and must accept liability for in-use performance of the (sic) all vehicles produced under the certificate of conformity as outlined in 40 CFR part 85."

Fleet Standards Rule, 59 FR 50042, 50081, to be codified at 40 CFR 88.306-94(d).

<sup>213</sup> Fleet Standards Rule, 59 FR 50042, 50061-50062.

<sup>214</sup> Fleet Standards Rule, 59 FR 50042, 50061-50062, 50064. Given the nature of their liability, EPA noted that "[k]it manufacturers would be wholly within their rights to require such indemnification agreements before allowing installers to install their kit." Fleet Standards Rule, 59 FR 50042, 50062.

<sup>203</sup> In comments responding to the Commission's ANPR, DOE noted that: "It would be more difficult, and perhaps unnecessary, for in-use vehicles (already owned and operated) that are converted to use alternative fuels during their vehicle life to meet the AFV labeling requirements." DOE, E-10, 3-4.

<sup>204</sup> See *supra* section III(A).

<sup>205</sup> See *infra* text accompanying notes 235 and 236.

<sup>206</sup> EPA 92 requires that DOE's information package "include information with respect to the conversion of conventional motor vehicles to [AFVs]." 42 U.S.C. 13231 (Supp. IV 1993).

<sup>207</sup> B-3, 16.

<sup>208</sup> B-3, 23.

<sup>209</sup> See proposed rule § 309.20(a)(2) (limiting labeling requirements for new covered vehicles to conversion systems installed "prior to such vehicle's being acquired by a consumer").

<sup>210</sup> 42 U.S.C. 7587(c); Emission Standards for Clean-Fuel Vehicles and Engines, Requirements for Clean-Fuel Vehicle Conversions, and California Pilot Test Program ("Fleet Standards Rule"), 59 FR 50042, 50061-50062, Sept. 30, 1994.

<sup>211</sup> Fleet Standards Rule, 59 FR 50042, 50061.

vehicles<sup>215</sup> is the "manufacturer." The proposed rule defines "manufacturer" as "the person who obtains a certificate of conformity that the vehicle complies with the standards and requirements of [EPA's emission and clean-fuel vehicle regulations]." <sup>216</sup> Under the proposed rule, manufacturers of new covered vehicles are required to affix (or cause to be affixed) new vehicle labels on each such vehicle prior to its being offered for acquisition by consumers.<sup>217</sup> If, however, an "aftermarket conversion system" (i.e., a conversion kit)<sup>218</sup> is installed on a vehicle by a person other than the manufacturer prior to being acquired by a consumer, the manufacturer is responsible for providing that person with the objective information regarding that vehicle required by the proposed rule.<sup>219</sup>

c. *Acquisitions by consumers.* As noted previously, the Commission's AFV labeling requirements are to assist "consumers," and one aspect of the Commission's NPR proposal defined that term as a purchase by an individual, corporation, or other business organization.<sup>220</sup> Several commenters stated that the proposed definition incorrectly limited the Rule's scope. For example, the Commission's proposal had the effect of excluding leasing arrangements from its scope. NAFA noted that EPA 92 and the Clean Air Act both impose AFV "acquisition" mandates on certain designated entities and suggested that the Commission's AFV labeling requirements track those requirements.<sup>221</sup> Other commenters addressing this issue agreed that the Commission should broaden the Rule's scope to encompass purchases and leases.<sup>222</sup> The proposed definition also had the effect of excluding purchases by government agencies. API stated that this definition should be modified to include federal, state, and local governments as consumers.<sup>223</sup>

As to leasing arrangements, the commenters indicated that interest in AFVs could be motivated in large part by congressional mandates. Because consumers will be required to "acquire" AFVs, the Commission has determined that its AFV labeling requirements should include such arrangements to the greatest extent practicable, and to modify its definition of consumer to further EPA 92's legislative purpose.

In determining what is practicable, the Commission notes that consumers entering into leasing arrangements have different information needs. For example, consumers entering into long-term leasing arrangements often do so for commercial purposes, and make leasing choices based on evaluating factors pertinent to a commercial acquisition. These persons likely would need the same vehicle information as purchasers and should be covered by the proposed rule. Consumers entering into short-term arrangements (e.g., weekend rentals to the general public for non-commercial purposes) may or may not have similar or equal need for pertinent information. In any event, they may not view the vehicle until after it has been leased. As a result, the labels would not help consumers make choices and comparisons. Based on its belief that consumers entering into short-term leasing arrangements will not make decisions based upon information disclosed in a label, the Commission thus has tentatively determined that including short-term leasing arrangements in the proposed rule is not necessary.

As to including governmental entities within the scope of the term "consumer," the Commission notes that EPA 92 imposes mandatory acquisition requirements on the Federal fleet.<sup>224</sup> As such, Federal fleet operators will likely have equal need for comparative information as other entities required to acquire AFVs. The Commission has tentatively determined, therefore, that neither the Federal government nor other governmental agencies should be excluded from the scope of its AFV labeling requirements.

To implement these tentative determinations, the proposed rule's labeling requirements apply to covered vehicles "offered for acquisition by consumers."<sup>225</sup> The intent of one aspect of this proposal is to include purchases and long-term leasing arrangements within the scope of the AFV labeling requirements. Accordingly, an

acquisition is defined in the proposed rule as including either of the following: (1) Acquiring the beneficial title to a covered vehicle; or (2) acquiring a covered vehicle for transportation purposes pursuant to a contract or similar arrangement for a period of 120 days or more.<sup>226</sup>

This definition was derived from a recent EPA regulation implementing aspects of the 1990 Clean Air Act Amendments,<sup>227</sup> which used the 120 day period as the dividing line between short and long-term leases. In the preamble announcing that regulation, EPA announced its determination that the 120 day period is slightly longer than a calendar season and that leases of less than that period were therefore short-term and temporary.<sup>228</sup> The Commission agrees that the 120 day period reflects a reasonable demarcation between short and long term rentals.

The Commission also proposes to define the term "consumer" to include individuals, corporations, partnerships, associations, States, municipalities, political subdivisions of States, and agencies, departments, or instrumentalities of the United States.<sup>229</sup> The proposed definition of this term was derived from section 302(e) of the 1990 Clean Air Act Amendments<sup>230</sup> and EPA's regulation implementing that section, 40 CFR 88.302-94 (1993).

d. *Used AFVs.* One commenter suggested that used AFVs should be excluded from the Commission's labeling requirements because section 406(a) was primarily concerned with new AFVs.<sup>231</sup> The remaining six commenters addressing this issue agreed that a consumer contemplating the acquisition of a used AFV would have the same need for comparative information as a consumer considering a new AFV, and thus used AFVs should be covered within the AFV labeling requirements.<sup>232</sup> At the Workshop, representatives for AMI and NAFA also stated that used AFVs should be included in this proceeding at the

<sup>215</sup> The Commission's revised proposal as to used covered vehicles is discussed *infra* section III(C)(1)(d).

<sup>216</sup> Proposed rule § 309.1(r).

<sup>217</sup> Proposed rule § 309.20(a)(1).

<sup>218</sup> See proposed rule § 309.1(b) (defining "aftermarket conversion system"). This definition was derived from a recently-issued EPA definition of the same term. See Gaseous Fuels Rule, 59 FR 48472, 48490, to be codified at 40 CFR 85.502(c).

<sup>219</sup> See proposed rule § 309.20(a)(2). Specific data proposed to be disclosed on labels for new covered AFVs is discussed *infra* section III(C)(2)(a).

<sup>220</sup> 59 FR 24014, 24018.

<sup>221</sup> NAFA (Tr.), 133. For example, EPA 92 requires that, "The Federal Government shall acquire at least 5,000 light duty [AFVs] in fiscal year 1993." 42 U.S.C. 13212(a)(1)(A) (Supp. IV 1993).

<sup>222</sup> DOE (Tr.), 135; ETC (Tr.), 135; NACAA (Tr.), 135; RFA, G-5, 5.

<sup>223</sup> API, G-25, 8.

<sup>224</sup> See 42 U.S.C. 13212 (Supp. IV 1993).

<sup>225</sup> See proposed rule §§ 309.20(a)(1) (new covered vehicles), 309.21(a) (used covered vehicles).

<sup>226</sup> See proposed rule § 309.1(a) (defining "acquisition").

<sup>227</sup> Clean Fuel Fleet Program; Definitions and General Provisions, 58 FR 64679, 64689-64690, Dec. 9, 1993 (defining the phrase "owned or operated, leased or otherwise controlled by such person" as used in section 241(5) of the 1990 Clean Air Act Amendments, 42 U.S.C. 7581(5)).

<sup>228</sup> 58 FR 64679, 64689, 64690 (excluding leases under 120 days from Clean Fuel Fleet Program).

<sup>229</sup> See proposed rule § 309.1(d) (defining "consumer").

<sup>230</sup> 42 U.S.C. 7602(e) (defining "person").

<sup>231</sup> NACAA (Tr.), 221.

<sup>232</sup> AMI (Tr.), 136, 218; Boston Edison, G-26, 10; ETC, G-24, 4; NAFA, G-20, 5, (Tr.), 222; PGC, G-22, 2; RFA, G-5, 5, (Tr.), 217.

present time because used AFVs are (or will soon be) offered for sale to consumers.<sup>233</sup> Two of these commenters recognized, however, that requiring used vehicle dealers to make objective disclosures regarding a used AFV's performance could be problematic.<sup>234</sup>

For example, because some cost-benefit information is included on temporary window stickers (e.g., EPA's fuel economy rating) or in vehicle owner's manuals, a used AFV dealer may not always possess such information. In any event, some comparative information (e.g., EPA's fuel economy rating) could vary significantly with the vehicle's condition.<sup>235</sup> Requiring disclosure of information based on the vehicle's condition when new could therefore be misleading to consumers.<sup>236</sup> To remedy this problem, EPA and ETC suggested that used AFV labeling disclose general descriptive information and not address objective performance factors.<sup>237</sup>

EPA 92's definition of AFV makes no distinction between new and used vehicles.<sup>238</sup> In developing the NPR the Commission believed that the market for such vehicles had not reached the volume where uniform labeling requirements were necessary. Accordingly, the Commission excluded such vehicles from the scope of its AFV labeling requirement and intended to review this issue as part of its periodic review of the labeling rule. The comments indicated, however, that consumers would likely have the same need for information, and would consider the same factors, whether they were contemplating a new or used AFV acquisition. Thus, after considering the record, the Commission has concluded that including such vehicles within the scope of its AFV labeling requirements is appropriate at this time.

However, the comments also indicated that requiring disclosure of

comparative information about used AFVs may not be practicable. To address one problem inherent in such a disclosure (i.e., the unavailability of pertinent information), the Commission has considered requiring that disclosures be displayed on permanent vehicle labeling. However, this option would not surmount the more basic problem that objective information may no longer accurately reflect the vehicle's present condition (and thus would not form a valid basis upon which to make reasonable choices and comparisons).<sup>239</sup> Accordingly, the Commission believes that requiring disclosure of information that may be inaccurate or invalid creates a risk of misleading consumers.

The Commission has thus tentatively determined that both new and used AFVs should be included within the scope of its labeling requirements, but that they be given different treatment. The proposed rule defines the terms "new covered vehicle" and "used covered vehicle" and establishes labeling requirements as to each classification.<sup>240</sup> Under the proposed rule, a new covered vehicle means a covered vehicle which has not yet been acquired by a consumer,<sup>241</sup> while a used covered vehicle means (in substance) a covered vehicle which previously has been acquired by a consumer.<sup>242</sup> The proposed rule also defines the terms "new vehicle dealer"<sup>243</sup> and "used vehicle dealer."<sup>244</sup> As described more fully below, the proposed rule addresses the problem of requiring disclosure of comparative information on used AFVs by establishing different labeling

formats (i.e., new vehicle labels<sup>245</sup> and used vehicle labels<sup>246</sup>) disclosing different types of information for new and used covered AFVs.<sup>247</sup>

## 2. Disclosures on AFV Labeling

As discussed below, 34 of the 37 commenters addressed the substance of the Commission's proposed AFV labeling requirements (i.e., the information to be disclosed on AFV labels).<sup>248</sup> In developing the NPR's proposed requirements, the Commission was guided by two sets of considerations. The first concerned problems associated with developing and publishing cost-benefit information. For example, the Commission considered the extent to which balanced, accurate information for pertinent comparative factors could be conveyed on the "simple" label envisioned by Congress.<sup>249</sup> It also considered whether appropriate technical standards existed to compare some factors, and whether providing the same information required in labels by other government agencies (in different formats) could confuse consumers.

The second set of considerations pertained to the type of information consumers would find most appropriate, useful, and timely in making AFV choices and comparisons. For example, the Commission stated in the NPR that consumers would require disclosure of far greater comparative information when considering an AFV purchase than when refueling.<sup>250</sup> As a result, the Commission proposed that AFV labels disclose more comprehensive cost-benefit information to consumers than labels for alternative fuels. The Commission also stated that because few consumers have extensive experience with AFVs, its labeling proposal should be designed to be useful to a general consumer audience. Finally, there was less need for the Commission to attempt to present complex information in the constrained format of an AFV label because DOE was required to prepare and distribute an information package for consumers.

<sup>233</sup> See AMI (Tr.), 218 ("[T]his is a real problem now. There are nearly 10,000 [flexible] fuel vehicles in California alone, and \* \* \* several hundred are being offered for sale now to private consumers."). See also NAFA (Tr.), 222:

"I think one of the things you have to be concerned about looking down the road with alternative fuels is that if there is not a resale market for these vehicles, the program will whither and die \* \* \* So we don't have a procedure to provide information to that second purchaser. And they have questions about alternative fuels. And they don't know how to go about getting a brochure like this \* \* \* If you don't create the resale market, then the first market doesn't really develop."

<sup>234</sup> ETC, G-24, 4; RFA (Tr.), 217

<sup>235</sup> EPA (Tr.), 220.

<sup>236</sup> Id.

<sup>237</sup> EPA (Tr.), 220; ETC, G-24, 4 (labels required by Commission's Used Car Rule, 16 CFR Part 455, could incorporate specific information about AFVs).

<sup>238</sup> See 42 U.S.C. 13211(3) (Supp. IV 1993) (defining "AFV").

<sup>239</sup> While consumers may expect that used vehicles will have different performance attributes than new cars, if the Commission required disclosure of specific data on standard labels (based on the vehicle's condition when new), it might create the impression with some consumers that these disclosures may still be valid.

<sup>240</sup> See proposed rule §§ 309.20 ("Labeling requirements for new covered vehicles"), 309.21 ("Labeling requirements for used covered vehicles").

<sup>241</sup> See proposed rule § 309.1(i) (defining "new covered vehicle").

<sup>242</sup> See proposed rule § 309.1(dd) (defining "used covered vehicle"). This definition was derived from the Commission's definition of the term "used vehicle" in its Used Car Rule, 16 CFR 455.1(d)(2) (1994).

<sup>243</sup> See proposed rule § 309.1(u). This definition was derived from EPA's definition of the term "dealer," the entity responsible for maintaining fuel economy labels on new automobiles. See 40 CFR 600.002-93(a)(18) (1993) (defining "dealer"). Under EPA's regulations, consumers selling used automobiles are not required to post or maintain fuel economy labels. In this proposal, the Commission similarly intends that individual consumers not be required to comply with the AFV labeling requirements.

<sup>244</sup> See proposed rule § 309.1(ee). This definition was derived from the Commission's definition of "dealer" in its Used Car Rule, 16 CFR 455.1(d)(3) (1994).

<sup>245</sup> See proposed rule § 309.1(v) (defining "new vehicle labels").

<sup>246</sup> See proposed rule § 309.1(ff) (defining "used vehicle labels").

<sup>247</sup> See *infra* section III(C)(2) (a) and (c), and proposed rule §§ 309.20(e) (new covered vehicles) and 309.21(e) (used covered vehicles).

<sup>248</sup> Three commenters (BOR, Greenpeace, and SIGMA) did not address disclosures on AFV labels.

<sup>249</sup> 59 FR 24014, 24019.

<sup>250</sup> *Id.* All nine commenters addressing that issue supported the Commission's assessment. AAMA (Tr.), 37-38; AMI, G-3, 1; Boston Edison (Tr.), 84; CEC, H-8, 1; ETC (Tr.), 42; NAFA (Tr.), 53; NPGA (Tr.), 50, 51; RFA, G-5, 4; Sun, G-1, 2.

After evaluating those considerations, the Commission tentatively determined that an AFV label disclosing a combination of information would be most useful to consumers making choices and comparisons. The specific label format proposed in the NPR disclosed a combination of information in a three-part format.<sup>251</sup> The first part would disclose objective information pertaining to each particular AFV, while the second and third parts would disclose information pertaining to AFVs in general.

The Commission re-evaluated all those considerations while developing this revised AFV labeling proposal. Of great significance in the development of this proposal was DOE's issuance of the first annual edition of its required information package in July 1993. That 32-page brochure, titled "Taking an Alternative Route: Alternative Fuels Fueling The Future," was expressly designed to meet the needs of a targeted consumer audience: fleet owners and managers.<sup>252</sup> While the brochure includes information specifically of interest to that group, it also includes general information about the most readily available alternative fuels: Electricity, ethanol, methanol, CNG, and propane. For each featured fuel, the brochure offers information regarding the same ten categories: fuel description (i.e., how the fuel is produced and its general composition for transportation purposes), domestic content, fueling (i.e., how AFVs powered by the fuel are refueled or recharged), fuel availability, vehicle experience and availability, operational performance (e.g., range, acceleration, and cruising speed), maintenance and reliability, safety, costs (e.g., fuel and conversion costs), and resources for further information (e.g., trade associations and the DOE Alternative Fuels Hotline).<sup>253</sup> The brochure also includes a glossary of relevant terms.<sup>254</sup>

The DOE brochure does not offer specific data regarding environmental performance. Instead, a standard statement ("Produces less air toxics and ozone-forming emissions than gasoline") is included in a graphic for each of the five featured fuels. The brochure also advises consumers

generally that manufacturers are responsible for certifying their vehicles to federal emission standards, that manufacturers seeking to produce and certify AFVs as clean-fuel vehicles must meet specified clean-fuel emission standards, and that AFV conversion companies face similar certification requirements.<sup>255</sup>

Of additional significance was EPA's promulgation of new regulations pertaining to alternative fuels and AFVs. For example, on May 27, 1994, EPA issued certification procedures for aftermarket conversion equipment (i.e., hardware allowing a vehicle to operate completely or in part on a fuel other than the fuel for which it was originally designed and manufactured) and emission standards and test procedures for the certification of certain CNG and LPG fueled vehicles.<sup>256</sup> On June 14, 1994, EPA also issued emission standards for certain clean-fuel vehicles and other conversion regulations.<sup>257</sup>

This revised proposal is the result of the Commission's analysis of all pertinent considerations, the rulemaking record (including written comments and Workshop statements) and recent developments. As described in more detail below, the Commission continues to believe that a combination of objective and descriptive information will best meet consumers' needs for comparative cost-benefit information. The Commission also believes that this format will best address the problems associated with developing and publishing such information.

a. *Specific data disclosures*—(1) *Fuel tank capacity/cruising range*. After considering disclosure of numerous objective factors, the Commission proposed in the NPR that one type of specific data—fuel tank capacity—be calculated and displayed on AFV labels.<sup>258</sup> Fuel tank capacity would be expressed in gallons for AFVs powered by liquid alternative fuels, and the Commission sought comment on how it should be disclosed for gaseous and electric powered AFVs. The Commission suggested that consumers could use fuel tank capacity to estimate cruising range, a "principal piece of cost-benefit information."<sup>259</sup>

Twenty-seven commenters addressed one or more aspects of this proposal.<sup>260</sup> Of those twenty-seven, three stated how fuel tank capacity should be expressed or displayed but did not otherwise support or oppose disclosure of this information.<sup>261</sup> Fifteen other commenters supported the Commission's proposal in whole or in part. Ten of those fifteen indicated that fuel tank capacity could be useful if it was expressed in equivalent units (i.e., which accounted for the fact that alternative fuels have different energy contents).<sup>262</sup> Eight of those ten commenters noted that consumers could use that information to determine cruising range.<sup>263</sup> Five other commenters stated that both fuel tank capacity and cruising range should be disclosed on AFV labels.<sup>264</sup>

Nine commenters opposed the proposal to require disclosure of fuel tank capacity. ETC stated that an electric vehicle's (EV) battery capacity is only one of a "wide number of factors" affecting cruising range and thus by itself is a poor indicator of that factor.<sup>265</sup> EMA and Flxible stated that disclosures as to either fuel tank capacity or range were not feasible for heavy-duty vehicles because such vehicles are often custom-ordered to meet a customer's specifications.<sup>266</sup> NPGA supported

<sup>250</sup> Eight other commenters (BOR, G-4; Greenpeace, G-27; MC-MD, G-23; NACAA, H-6; NHTSA, H-1; SIGMA, G-23; Texas ADA, G-11; Thomas BB, G-10) did not address any aspect of this issue. Two others indicated general support for the Commission's labeling proposal without addressing this specific issue. EIA/EEU-USD, H-2, 1; Texas RRC, H-3, 1.

<sup>251</sup> EPA, H-4, 2 (fuel tank capacity should be expressed in same units that will be used in retail sales "if [the Commission] decides in the final rule to include" that measure) (emphasis added); NADA, G-19, 2 (fuel tank capacity "could easily be incorporated into" EPA fuel economy labels). TVA stated that AFV labels for electric vehicles should disclose electrical capacity, recharging voltage, recharging architecture, and connection configuration. TVA, H-5, 1. TVA did not otherwise define or explain the significance of the third and fourth factors.

<sup>252</sup> AAMA, G-7, 2; AGA/NGVC, G-6, 10; API, G-26, 5-6; Chrysler, G-13, 1 (supporting AAMA); Ford, G-14, 1, 2 (supporting AAMA); GM, G-8, 1, 4, 5 (supporting AAMA generally, but suggesting that battery capacity for EVs be expressed in kilowatt-hours, "the accepted standard unit of measurement for electricity."); Mobil, G-2, 5; Nebraska EO, H-9, 1; Sun, G-1, 2; Unocal, G-9, 2.

<sup>253</sup> AAMA, G-7, 2; AGA/NGVC, G-6, 10; API, G-26, 5-6; Chrysler, G-13, 1 (supporting AAMA); Ford, G-14, 1, 2 (supporting AAMA); GM, G-8, 1 (supporting AAMA); Sun, G-1, 2; Unocal, G-9, 2. Two of those commenters also said that for electric vehicles, range, and not battery capacity, should be disclosed to consumers. Mobil, G-2, 5; Sun, G-1, 2.

<sup>254</sup> AMI, G-3, 1; CEC, H-8, 9; DOE, H-10, 4, (Tr.), 146; Phillips 66, G-15, 1; UCS (Tr.), 143.

<sup>255</sup> ETC, G-24, 1.

<sup>256</sup> EMA, G-21, 5-6, (Supp.), 4; Flxible (Supp.), G-12, 3.

<sup>251</sup> 59 FR 24014, 24019-24020.

<sup>252</sup> Commission staff placed a copy of DOE's brochure on the public record of this proceeding. For example, the brochure describes mandates and incentives pertinent to fleet operators contained in EPA 92 and the 1990 Clean Air Act Amendments. B-3, 1, 3-15, 26-32.

<sup>253</sup> B-3, 16-25. CAS notes that environmental and consumer organizations are not included as sources to contact for more information. CAS (Supp.), G-17, 6.

<sup>254</sup> B-3, inside cover.

<sup>255</sup> B-3, 13.

<sup>256</sup> Gaseous Fuels Rule, 59 FR 48472, Sept. 21, 1994.

<sup>257</sup> Fleet Standards Rule, 59 FR 50042, Sept. 30, 1994.

<sup>258</sup> 59 FR 24014, 24020.

<sup>259</sup> *Id.* For AFV's with EPA fuel economy labels, consumers could estimate cruising range by multiplying fuel tank capacity by the posted miles-per-gallon rating for that vehicle. *Id.* at 24020 n.153.

disclosing fuel economy (expressed as miles/gallon) because "most consumers will more readily understand" that information.<sup>267</sup> Five other commenters stated that cruising range should be disclosed instead of fuel tank capacity.<sup>268</sup>

As noted previously, the Commission must require disclosure of appropriate cost-benefit information to help consumers make choices and comparisons. Given that mandate, the Commission has considered whether the record supports its prior belief that information about fuel tank capacity (however expressed) would help consumers make meaningful choices and comparisons. As the Commission indicated in its NPR, it considered disclosure of fuel tank capacity important not for its own significance, but as a way of helping consumers calculate cruising range.<sup>269</sup> Commenters responding to the NPR noted that cruising range is an objective piece of cost-benefit information upon which consumers can make choices and comparisons.<sup>270</sup> It is also one of the most important facts consumers need regarding whether and which AFV to acquire; as AAMA noted: "This information (i.e., range) is vital for the consumer when deciding between various alternative fuels \* \* \*."<sup>271</sup> Because cruising ranges for AFVs can differ significantly from cruising ranges for conventional fuel vehicles, with which consumers are most familiar, consumers also have a practical need for this information.<sup>272</sup>

After reviewing the record, however, the Commission has decided not to propose disclosure of fuel tank capacity as a surrogate for cruising range. The Commission notes that while fuel tank

capacity has the advantage of being able to be expressed with precision,<sup>273</sup> its usefulness to consumers might be undermined by several factors. First, fuel tank capacity by itself is a poor indicator of cruising range because (1) alternative fuels have different energy contents per unit of measure and (2) engines are not equally efficient. Therefore, vehicles with equivalent-sized fuel tanks could achieve different cruising ranges.<sup>274</sup>

Second, attempts to account for energy-content differences by expressing each tank's capacity in equivalent units (e.g., so-called "gasoline equivalent gallons") could be similarly problematic because consensus methods for making such conversions or comparisons have not yet been developed or promulgated for all alternative fuels.<sup>275</sup> For example, DOE is required to determine a "petroleum equivalency factor" for various classes of electric vehicles.<sup>276</sup> Such a factor would permit comparisons between the fuel economies of conventional and electric powered vehicles.<sup>277</sup> Similarly, DOT has not yet established fuel equivalency factors for "gaseous fuels other than natural gas" (i.e., liquefied natural gas, liquefied petroleum gas, and hydrogen), as required by EPA 92.<sup>278</sup>

The Commission also notes that while two consensus standards for comparing CNG and gasoline have been developed, they appear to be based on different measures. The National Conference on Weights and Measures, a consensus standards-writing organization for state and local regulatory agencies, recently adopted a proposal defining CNG in terms of mass (i.e., either kilograms or pounds).<sup>279</sup> EPA's fuel economy

calculations, however, are based on volumetric calculations which measure CNG in terms of cubic feet.<sup>280</sup> At the Workshop, AGA/NGVC's representative stated that these two measures "are largely apples and oranges."<sup>281</sup> That representative noted, however, that both measurements yielded results which were "very, very close."<sup>282</sup>

Third, several commenters supporting disclosure of fuel tank capacity stated that consumers could use that information, along with EPA's fuel economy estimates, to determine approximate cruising range.<sup>283</sup> However, AFVs powered by certain fuels are not yet required to post fuel economy labels. As a result, consumers considering AFVs not covered by EPA's labeling program will not be able to use fuel tank capacity to calculate cruising range.

Other commenters expressed opposition to disclosing cruising ranges on AFV labels. In supplemental written comments filed after the Workshop, AAMA noted that although cruising range "may be useful information for a consumer when purchasing an AFV," it preferred that such information not be disclosed on AFV labels.<sup>284</sup> First, AAMA stated that disclosing cruising range for AFVs "did not provide an adequate comparison for all vehicles" because gasoline and diesel vehicles do not require disclosure of that information.<sup>285</sup> Second, AAMA stated that disclosing this information could mislead consumers because no established test exists to measure it (making comparisons difficult).<sup>286</sup> and it is difficult to estimate.<sup>287</sup> For example, cruising range depends on vehicle options, driving conditions, personal driving habits, and vehicle conditions, all of which "can dramatically affect the actual driving range."<sup>288</sup> As a result, disclosure of cruising range would be

<sup>267</sup> NPGA, G-18, 3. NPGA further stated that fuel tank capacity "might be valid useful information" when a vehicle's fuel economy was "relatively close in value" when operating on either an alternative fuel or gasoline. *Id.* DOE's information brochure indicates that propane is the only alternative fuel with such properties. See B-3, 25 ("Range is almost equivalent to that of comparable gasoline vehicle."). At the Workshop, NPGA's representative supported disclosing cruising range on AFV labels. NPGA (Tr.), 51.

<sup>268</sup> Boston Edison (Supp.), G-26, 8-9, 11-12; CAS, G-17, G-17, 2, (Tr.), 138, (Supp.), 1; NAFA, G-20, 2-3; PCC, G-27, 2; RFA, G-5, 4, (Supp.), 1.

<sup>269</sup> 59 FR 24014, 24020.

<sup>270</sup> CAS (Tr.), 156 (range gives consumers "the ability to compare in the showroom a very visible number that you can go from car to car to car and compare."); (Supp.), G-17, 1.

<sup>271</sup> AAMA, G-7, 2. See also AMI (Tr.), 141 (range is one of the most important factors); NAFA (Tr.), 147 (same); Boston Edison (Supp.), G-26, 9; (Tr.), 142 (range is most important concern of people considering EV purchase).

<sup>272</sup> RFA (Tr.), 153, (Supp.), G-5, 2 ("[G]iven the sparsity and distance between alternative fuel refueling stations, vehicle owners need to be aware of approximate range.").

<sup>273</sup> GM (Tr.), 140; UCS (Tr.), 143.

<sup>274</sup> Boston Edison (Supp.), G-26, 11-12 (fuel tank capacity is not relevant, does not provide consumers with meaningful comparisons, and is misleading); ETC (Tr.), 150 (fuel tank capacity alone "is not going to give you a good basis for being able to \* \* \* figure out what you really need to know, which is how far you're going [to go]"); Mobil, G-2, 5; Nebraska EO, H-9, 1.

<sup>275</sup> At the Workshop, AAMA appeared to acknowledge the difficulties inherent in such an approach. Discussing a label format it suggested the Commission should consider, its representative stated that, "We had originally put language referring to gasoline equivalent gallons, but recognizing the problems with some nonliquid fuels, we're leaving that open at present." AAMA (Tr.), 165-66.

<sup>276</sup> 15 U.S.C. 2003(a)(3) (A), (C); 49 FR 5336, 5337, Feb. 4, 1994.

<sup>277</sup> *Id.* DOE proposed to promulgate new equivalency factors in an NPR published Feb. 4, 1994, to update those last published in 1987. 59 FR 5336.

<sup>278</sup> 15 U.S.C. 2013(c) (Supp. IV 1993).

<sup>279</sup> National Conference on Weights and Measures, S.1.2.2, Units of Measure for Natural Gas When Sold as an Engine Fuel (adopted July 1994).

<sup>280</sup> EPA (Tr.), 112; NPGA (Tr.), 158.

<sup>281</sup> AGA/NGVC (Tr.), 111; see also NPGA (Tr.), 158 ("And so they're not going to be equal no matter what you do.").

<sup>282</sup> AGA/NGVC (Tr.), 112; see also NPGA (Tr.), 159 ("I don't think right now they're off far enough to upset the whole apple cart. In the future it may need some refinement.").

<sup>283</sup> See, e.g., Ford, G-14, 1-2, (Tr.), 145.

<sup>284</sup> AAMA (Supp.), G-7, 1, 3. See also GM (Tr.), 139-40 ("I think range is an important factor, but how do you actually show that number that's meaningful that's real.").

<sup>285</sup> AAMA (Supp.), G-7, 3.

<sup>286</sup> Ford (Tr.), 147; GM (Tr.), 139-40.

<sup>287</sup> For heavy duty vehicles, EMA and Flexible noted that cruising range was difficult to estimate because individual models could have different fuel tank capacities, customer usage, load, and other options. EMA (Supp.), G-21, 4; Flexible (Supp.), G-12, 3.

<sup>288</sup> AAMA (Supp.), G-7, 3.

impractical because the information would be subject to too many caveats.<sup>289</sup>

Specific fuels also raise problems unique to those fuels (i.e., an electric vehicle's range "may vary significantly" according to air temperature,<sup>290</sup> a CNG powered AFV's according to refueling pressure and fuel temperature,<sup>291</sup> and a dual fueled AFV's cruising range "will vary according to which fuel is in the tank."<sup>292</sup> GM added that other factors yet to be determined may also affect cruising range.<sup>293</sup> As a result, disclosing cruising range could be misleading because consumers will not likely get that actual range while driving.<sup>294</sup>

The Commission notes, however, that the absence of cruising range information on conventional fueled vehicles will not preclude comparisons to AFVs as to that factor.<sup>295</sup> For example, DOE's information package addresses cruising range for four of the five featured fuels (ethanol, methanol, CNG, and propane) in terms of a comparable gasoline-powered vehicle.<sup>296</sup> The Commission also expects that requiring disclosure as to this factor could encourage affected manufacturers and dealers to provide additional information to meet consumers' expectations and needs.<sup>297</sup>

Second, the other identified problems do not preclude an accurate, understandable, and comparable disclosure as to cruising range. The proposed label format could specifically identify the cruising range disclosure as being a "manufacturer's estimate," and advise consumers that actual cruising range "will vary with options, driving conditions, driving habits and the vehicle's condition." Consumers could be further cautioned that the labels are for comparison purposes and "may not

reflect actual driving range." A disclosure displayed in this format is not likely to pose problems to consumers accustomed to estimates.<sup>298</sup> As a Workshop participant stated, some consumers may also have a particular need for such information.

[But personally if I was leaving on a 50 or 60-mile trip and my cruising range could be as low as 30, I'd like to know that. So I think I would like to know the low end of it even if there is a broad, you know, number that's not very well defined. I think it's still beneficial to know what the minimum, certainly the minimums are, because you have to be able to make it to the next fueling point.<sup>299</sup>

The Commission also notes that cruising range appears to be a prominent component of marketing and advertising claims promoting the use of AFVs, as demonstrated by the frequency which that factor is cited in consumer announcements. For example, Chrysler, GM and Ford have all made cruising range claims regarding their EVs in congressional testimony,<sup>300</sup> promotional material<sup>301</sup> and product specification sheets.<sup>302</sup> Chrysler and GM also address cruising range in owner's manuals for the 1994 Dodge Spirit<sup>303</sup> and 1993 Chevrolet Lumina.<sup>304</sup> Peugeot has made

similar claims in its promotional material.<sup>305</sup> Companies converting cars to run on electricity<sup>306</sup> and electricity utilities<sup>307</sup> are also making cruising range claims for EVs. Similar claims are also being made for AFVs powered in whole or in part by CNG,<sup>308</sup> hydrogen,<sup>309</sup> LPG,<sup>310</sup> and methanol.<sup>311</sup>

("When using an E-85 mixture of fuel, your Lumina has a range of 250-300 miles (400-480 km)."; 1992 Chevrolet Lumina Owner's Manual—Methanol Supplement, at 5 ("When using an M-85 mixture of fuel, your Lumina has a range of 200-250 miles (320-400 km).").

<sup>305</sup> PSA Peugeot Citroën, *Electric Vehicles*, B-13, at 3-5, 1992 (Peugeot 106 has range of 90-160 km; Citela has range of 210 km @ 40 kph; 110 km city \* \* \* car continuously displays remaining range); Peugeot 405 Station Wagon has battery range of 72 km at 40 kph and highway range of 750 km at 100 kph).

<sup>306</sup> Dreisbach ElectroMotive, Inc., *API Demi Motorola Saturn*, B-14, front, undated (range from 140 to 518 miles depending on battery configuration); Electro Automotive, *Electro Automotive Makes Electric Cars Easy With The Voltzrabit(tm) Kit*, B-15, front, undated (range: 60-80 miles); Solar Car Corporation, *Specifications for Chevy S-10 and GMC S-15 Pickup Truck (converted to run on electricity)*, B-16, front, Aug. 1, 1992 ("Normal Daily Range—50 to 80 miles, depending on terrain, speed and driving conditions.").

<sup>307</sup> Arizona Public Service Company, *Electric Vehicle Program*, B-17, at first upper panel, undated ("Today's batteries give EVs a range of 30 to 100 miles on a single charge."); Electric Power Research Institute, *Electric Vehicle Infrastructure: How Far Will My Electric Vehicle Take Me?*, B-18, front, 1992 ("[Today's EV models \* \* \* offer a driving range of 60 to 100 miles \* \* \*"]; Virginia Power, *The Electric Vehicle: Clean, Quiet and Efficient* (CO 923-VA/EE 93084), B-19, front, undated (Solectria Force has range of 70-90 miles); Potomac Electric Power Company, *Questions and Answers About the Solectria Force*, B-20, front, Dec. 1992 (Solectria Force has driving range of "60 miles if the batteries are fully charged \* \* \* The effective range of the Force using current off-the-shelf battery technology is approximately 35 to 40 miles on a charge.").

<sup>308</sup> Blue Bird Body Company, *Product Specifications for NGV School Buses (models TC/2000 FE and TC/2000 RE)*, B-21, at 3, 1992 ("Vehicle range—300 miles with 6 tanks, 150 miles with 3 tanks"); Ford, *Crown Victoria dedicated CNG*, B-22, front, March 3, 1993 ("The driving range for these demonstration units is approximately 200 miles.").

<sup>309</sup> Mazda, *Mazda Takes Action To Address Global Environmental Concerns*, B-23, at 3, July 27, 1993 ("With a full tank of hydrogen, the Mazda HR-X has a range of up to 125 miles.").

<sup>310</sup> Clean Fuels Task Force of Western Liquid Gas Association, *LPG: An Alternate Clean Air Motor Fuel With Significant Environmental and Economic Advantages*, B-24, 7, May 1992 ("LPG offers the best range per gallon of the four non-gasoline clean fuels."); NPGA, *LP-Gas Is Moving America's Fleets*, B-25, 6, 1991 (chart comparing driving ranges for "identical vehicles, optimized for their specific fuel.").

<sup>311</sup> Ford, *Taurus passenger car FFV* [using gasoline or M85], B-26, front, March 4, 1993 ("Highway driving range is approximately 350 miles when using M85."); Ford, *Ford Announces Production of 1993 Taurus FFV*, B-27, at 1, Dec. 16, 1992 ("By increasing the size of the fuel tank to 20.7 gallons, the driving range of the Taurus FFV when fueled with M85 is similar to a non-FFV Taurus.");

Continued

<sup>289</sup> Ford (Tr.), 144-45.

<sup>290</sup> AAMA (Supp.), G-7, 4; Ford (Tr.), 144.

<sup>291</sup> AAMA (Supp.), G-7, 4.

<sup>292</sup> *Id.*

<sup>293</sup> GM (Tr.), 150-51 ("There are a lot of factors there that aren't clearly understood \* \* \* And it just seems at this point in the juncture of the technology that \* \* \* when you get into range with the emerging technology they're not really understanding all the factors that impact that yet.").

<sup>294</sup> AAMA (Supp.), G-7, 4.

<sup>295</sup> As noted previously, the Commission believes that it has no authority to require labeling for vehicles powered by gasoline or diesel fuel. See *supra* text accompanying note 38.

<sup>296</sup> B-3, 19, 21, 23, 25.

<sup>297</sup> See AGA/NGVC, G-6, 12 ("[F]uel retailers, vehicle manufacturers and trade associations can target and educate specialty markets and their consumers."). In response to the Commission's ANPR, Boston Edison also stated that "over time, market forces will create incentives for sellers to identify and respond to consumer demands for information, much as gasoline sellers supplement the information that they are required to provide under the Commission's Octane Rule." Boston Edison, D-11, 13.

<sup>298</sup> AMI (Tr.), 155 (consumers understand that "basic information" on the label is not going to be precise).

<sup>299</sup> RFA (Tr.), 149. See also RFA (Supp.), G-5, 2 ("the fact that a number of variables affect range does not preclude posting an estimated minimum and maximum range").

<sup>300</sup> For example, at a May 11, 1993, congressional hearing, representatives from Chrysler, Ford, and GM all made cruising range claims for their EVs. See *Status of Domestic Electric Vehicle Development*, 103d Cong., 1st Sess. (1993) (statement of Doran K. Samples, Program Management Executive of the Electric Minivan Project, Chrysler, at 52, 56; Roberta J. Nichols, Electric Vehicle External Strategy Manager, Ford, at 60, 64, 66; and Kenneth R. Baker, Vice President, GM, at 76).

<sup>301</sup> See GM, *Progress Report*, B-5, front, Spring/Summer 1993 (GM's Impact 4 EV has "a driving range of 70 miles in the city and 90 miles in normal highway driving."); GM, *GM's "Impact" Show Car and New Pre-Production Electric Vehicle Lead the 104th Tournament of Roses*, B-6, at 2, Dec. 29, 1992 ("The Impact and the pre-production car \* \* \* have a useful range of 100 miles \* \* \*"); GM, *General Motors Electric Vehicles Fit Most Drivers' Lifestyles*, B-7, at 1, Oct. 20, 1992 ("GM's 'Impact' prototype has a highway range of 100 miles.").

<sup>302</sup> Chrysler 1994 Dodge Caravan/Plymouth Voyager, B-8, back, May 7, 1993; Chrysler 1994 Dodge Caravan/Plymouth Voyager, B-9, back, Aug. 31, 1992; Ford Ecostar, B-10, back panel, undated; GM Impact 3, B-11, back, undated; GM Impact, B-12, back, undated ("It has a practical range of 80 miles per charge.").

<sup>303</sup> AAMA (Supp.), G-7, 1994 Dodge Spirit Owner's Manual at 105 ("Cruising Range: M-85 produces less energy when burned than gasoline. Therefore, cruising ranges and miles per gallon (MPG) will be considerably less when using M-85. Cruising ranges will increase as the content of gasoline in the fuel tank increases.").

<sup>304</sup> AAMA (Supp.), G-17, 1993 Chevrolet Lumina Owner's Manual—Ethanol Supplement, at 4

As such, it appears that a disclosure about cruising range may be feasible even given certain constraints.

After considering this information, the Commission has determined that no matter how displayed (e.g., with cruising range or other objective measure), fuel tank capacity does not appear to be the most useful way to help consumers make comparisons. Instead, because of its possibly paramount importance to consumers, the Commission has tentatively determined that cruising range itself should be disclosed on labels for new covered AFVs.<sup>312</sup> Under the Commission's revised proposal, cruising range would be displayed on AFV labels in two formats. The first labeling format would be for dedicated covered AFVs (i.e., covered AFVs designed to operate solely on alternative fuel).<sup>313</sup> Labels for these vehicles would disclose the manufacturer's "estimated cruising range" for that vehicle (i.e., the manufacturer's reasonable estimate of the number of miles a covered vehicle will travel between refueling or recharging), expressed as a lower estimate and an upper estimate.<sup>314</sup> Figure 4 at the end of this SNPR illustrates a sample disclosure for these vehicles.

The second labeling format would be for dual-fueled covered AFVs (i.e., capable of operating on alternative fuel and capable of operating on gasoline or diesel fuel).<sup>315</sup> Labels for these vehicles would disclose two sets of values: the manufacturer's reasonable estimate of (a) the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on alternative fuel, and (b) the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on conventional fuel.<sup>316</sup> Figure 5 at the end of this SNPR

illustrates a sample disclosure for these vehicles.

Cruising range values would be expressed in whole integers. Because the disclosure would relate solely to the manufacturer's estimated (and not actual) cruising range, the labels would include a statement advising consumers that their actual cruising range will vary with options, driving conditions, driving habits and the AFV's condition.<sup>317</sup>

Under the Commission's revised proposal, manufacturers would calculate cruising range values in one of three ways. For vehicles required to comply with EPA's fuel-economy labeling provisions,<sup>318</sup> cruising range values would be calculated by reference to the vehicle's estimated fuel-economy rating.<sup>319</sup> For example, the lower range value would be determined by multiplying the vehicle's estimated city fuel-economy by its fuel tank or battery capacity, then rounding to the next lower integer value.<sup>320</sup> Conversely, the upper range value would be determined by multiplying the vehicle's estimated highway fuel-economy by its fuel tank capacity, then rounding to the next higher integer value.<sup>321</sup>

As noted previously, EPA is required to include AFVs powered by all alternative fuels within its fuel-economy labeling program, but has not yet announced a timetable for doing so.<sup>322</sup> During the transition to that next phase, the Commission therefore proposes a different approach for vehicles not yet required to comply with EPA's fuel-economy labeling provisions. For electric vehicles, the Commission notes that the Society of Automotive Engineers ("SAE"), a consensus standard-setting organization, has issued a "Recommended Practice" establishing uniform procedures to calculate cruising range for electric vehicles.<sup>323</sup> The Commission believes

that reliance on uniform standards will facilitate comparability.<sup>324</sup> Accordingly the proposed rule states that cruising range values for EVs be calculated in accordance with that standard.<sup>325</sup>

For other vehicles not yet required to be labeled with EPA's fuel economy stickers, the Commission knows of no comparable consensus procedure that could yield cruising range values in the proposed "minimum-maximum" format. As a result, the Commission is not requiring that manufacturers use a specific standard to determine cruising range. In similar situations (i.e., where the Commission has identified areas where consumers require disclosure of specific information, but no consensus standards exist to measure such information), the Commission has required that manufacturers have a "reasonable basis" for such disclosures.<sup>326</sup> Accordingly, for those vehicles, the Commission proposes that manufacturers possess a reasonable basis, consisting of competent and reliable evidence, of the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings.<sup>327</sup>

During this transition (i.e., while EPA is developing fuel-economy labeling requirements), if test methods for determining cruising range values for AFVs are developed by consensus, the Commission will consider whether they constitute a reasonable basis.<sup>328</sup> The Commission expects that industry compliance with this AFV labeling rule, in conjunction with the need to avoid uncertainty about whether particular test methods or calculations constitute a reasonable basis, will encourage development of standardized test methods and specifications. This, in

<sup>324</sup> B-33, 1.

<sup>325</sup> See proposed rule §§ 309.22(a)(2) (for dedicated vehicles), 309.22(b)(2) (for dual-fueled vehicles).

<sup>326</sup> See, e.g., Fuel Rating Rule, 16 CFR 306.5(b) (1994) ("To determine automotive fuel ratings for alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the [fuel] that you must disclose."); Care Labeling Rule, 16 CFR 423.6(c)(1)-(6) (1994) ("reasonable basis" based on "reliable evidence"); R-value Rule, 16 CFR 460.19(a) (1994) ("If you say or imply in your ads, labels, or other promotional materials that insulation can cut fuel bills or fuel use, you must have a reasonable basis for the claim.").

<sup>327</sup> See proposed rule §§ 309.22(a)(3) (for dedicated vehicles), 309.22(b)(3) (for dual-fueled vehicles).

<sup>328</sup> The Commission encourages DOE, as part of its "technical assistance," to direct the development of such transition specifications. See 42 U.S.C. 13232(b) (Supp. IV 1993) (DOE "shall provide technical assistance" to the Commission and coordinate that assistance with its development of a consumer information brochure).

Ford, Econoline van and Club Wagon FFV (using gasoline and M85), B-28, front, March 4, 1993 ("The highway driving range is approximately 400 miles when using M85.").

<sup>312</sup> The Commission does not propose requiring disclosure of this information on labels for used covered AFVs. As noted previously, comparative information could vary significantly with a vehicle's condition. Requiring disclosure of such information on used vehicles could therefore be misleading to consumers. See *supra* section III(C)(1)(d).

<sup>313</sup> See proposed rule § 309.1(g) (defining "dedicated").

<sup>314</sup> See proposed rule § 309.1(o) (defining "estimated cruising range"), 309.20(f)(2)(i) (requiring disclosure of estimated cruising range for dedicated vehicles).

<sup>315</sup> See proposed rule § 309.1(i) (defining "dual fueled").

<sup>316</sup> See proposed rule § 309.20(f)(2)(ii) (requiring disclosure of estimated cruising range for dual-fueled vehicles).

<sup>317</sup> EPA's fuel economy labels contain a similar statement. See 40 CFR 600.307-86(a)(3)(ii)(A) (1993) ("Actual mileage will vary with options, driving conditions, driving habits, and [vehicle's/truck's] condition."). See Figures 4 and 5 at the end of this SNPR.

<sup>318</sup> See 40 CFR part 600 (1993) ("Fuel economy of motor vehicles").

<sup>319</sup> Numerous commenters suggested that cruising range values could be so calculated. See, e.g., AAMA (Supp.), G-7, 3 ("Combining MPG with tank capacity can give the customer a reasonable estimation of driving range."); AMI (Tr.), 141; CAS (Supp.), G-17, 1-2; EPA (Tr.), 144; RFA (Tr.), 148.

<sup>320</sup> See proposed rule § 309.22(a)(1)(i).

<sup>321</sup> See proposed rule § 309.22(a)(1)(ii).

<sup>322</sup> 59 FR 39638, 39639 (announcing fuel-economy test labeling requirements for methanol and CNG vehicles).

<sup>323</sup> SAE's "Electric Vehicle Energy Consumption and Range Test Procedure," J1634, was issued in May 1993. B-33. This procedure is based in part on EPA's pertinent test procedures. B-33, 1, 9-10.

turn, may facilitate widespread acceptance of AFVs.

The proposed rule also includes a provision requiring that manufacturers maintain records for three years demonstrating compliance with the proposed rule.<sup>329</sup> While section 406(a) does not expressly address this issue, the Commission believes that a reasonable recordkeeping requirement is necessary to ensure the accuracy of disclosures made pursuant to these labeling requirements.

(2) *Environmental impact.* Incorporating environmental considerations into national energy policy was a key goal of EPA 92, and "improving our environment" was a "principal purpose" of that statute.<sup>330</sup> Consistent with EPA 92's legislative purpose, numerous commenters responding to the Commission's ANPR identified information about environmental performance as being important to consumers considering AFV acquisitions.<sup>331</sup> The Commission therefore considered requiring disclosure of comparative information as to this factor in its NPR. More specifically, the Commission considered whether disclosure of accurate information regarding the complete environmental cost of driving a particular AFV was feasible on a simple label.

After considering such a comprehensive disclosure, the Commission tentatively decided that it was not appropriate for AFV labeling. An accurate assessment of the complete environmental impact of driving a particular vehicle could require a comprehensive review of numerous chemical compounds,<sup>332</sup> measured at each stage of the fuel's life-cycle (i.e., during fuel production, distribution, handling, storage, dispensing, and combustion).<sup>333</sup> Given that high standard, the Commission also concluded that assessing any one factor (e.g., tail-pipe emissions) without accounting for the others could be misleading.<sup>334</sup> Because disclosure on a "simple" label of the complete environmental costs of an AFV did not

appear feasible, the Commission proposed to address this factor by including it in a standard list of issues consumers should consider when considering an AFV acquisition.<sup>335</sup>

Twelve commenters addressed the Commission's decision to omit comparative environmental information from AFV labels. Comments from automobile manufacturers generally favored not including such information on AFV labels. Those commenters stated that such disclosure was not appropriate because existing regulations require labeling indicating that the vehicle complies with federal standards,<sup>336</sup> marketing considerations will encourage manufacturers to disclose this information,<sup>337</sup> and existing standards assessing only tailpipe emissions present an incomplete and misleading picture of a vehicle's environmental performance.<sup>338</sup> Eight other commenters, however, contended that a comparative disclosure as to environmental impact did not need to be based upon the full life-cycle impact of driving a particular vehicle.<sup>339</sup> Instead, those commenters suggested that the Commission require disclosure of objective environmental information by reference to a specific existing standard: the emission classification to which the vehicle has been certified.<sup>340</sup>

For several years, EPA has promulgated emission classification standards as part of its Federal Motor Vehicle Control Program, which establishes pollution limits for "criteria air pollutants" (i.e., hydrocarbons ("HC"),<sup>341</sup> carbon monoxide ("CO"),<sup>342</sup>

nitrogen oxides ("NO<sub>x</sub>"),<sup>343</sup> and particulate matter ("PM").<sup>344</sup> Each of these pollutants is released into the air from an automobile's tailpipe as exhaust (i.e., as a by-product of an automobile's incomplete combustion process). In addition, HCs in vapor form are also released due to the evaporation of fuel and during refueling. The standards apply to new motor vehicles manufactured in specified model years. For example, exhaust emissions for light duty vehicles manufactured prior to 1994 "shall not exceed" the following levels (later denominated the "Tier O" emission standards), as measured using designated tests:<sup>345</sup> 0.41 grams/mile ("gpm") HC, 1.0 gpm NO<sub>x</sub>, and 3.4 gpm CO.<sup>346</sup> After submitting appropriate test reports and data, the EPA Administrator issues a "certificate of conformity" to those vehicle manufacturers demonstrating compliance with the applicable emission standards.<sup>347</sup>

Pursuant to its authority under the 1990 Clean Air Act Amendments,<sup>348</sup> EPA began issuing stricter emission standards for each model year as a way of reducing levels of the criteria air pollutants. One set of standards (denominated the "Tier 1" standards) is being phased in beginning with the 1994 model year.<sup>349</sup> The second set establishes five stricter standards as part of a new "clean-fuel vehicles" program.<sup>350</sup> To qualify as a clean-fuel vehicle, a vehicle must meet one of five sets of increasingly stringent standards. These standards are denominated, in increasing order of stringency, TLEV ("Transitional Low Emission Vehicle"), LEV ("Low Emission Vehicle"), ULEV ("Ultra Low Emission Vehicle"), ILEV ("Inherently Low Emission Vehicle"), and ZEV ("Zero Emission Vehicle").<sup>351</sup>

<sup>343</sup> NO<sub>x</sub> are "precursors to the formation of smog." *Id.*

<sup>344</sup> PM is a general term for soot, dust, smoke, and other tiny bits of solid material released into the air. It can cause eye, nose, and throat irritation and other health problems. B-32, 22.

<sup>345</sup> Exhaust emissions are measured on a "chassis dynamometer," which simulates forces encountered on the road. Exhaust gases are sampled during the tests and analyzed afterward.

<sup>346</sup> 40 CFR 86.085-8(a)(1)(i) to (iii) (1993). The PM standard (0.60 gpm) applies only to diesel engine. 40 CFR 86.085-8(a)(1)(iv) (1993).

<sup>347</sup> See, e.g., 40 CFR 86.091-30 (1993) (certification procedures for 1991 model year).

<sup>348</sup> Pub. L. 101-549, 104 Stat. 2399 (1990).

<sup>349</sup> The first Tier I standards (applicable to the 1994 and 1995 model year) became effective July 5, 1991. 56 FR 25724, 25724, June 5, 1991.

<sup>350</sup> See 40 CFR Part 88 (1993) ("Clean-Fuel Vehicles").

<sup>351</sup> According to EPA, a vehicle certified as meeting the requirements of both the ULEV and ILEV standards have lower combined exhaust and evaporative emissions than an ILEV certified vehicle.

<sup>329</sup> See proposed rule § 309.23.

<sup>330</sup> H. Rep. No. 102-474(I), 102d Cong., 2d Sess. 133, reprinted in 1992 U.S.C.A.N. 1953, 1956. The drafters also sought, *inter alia*, "to promote cleaner alternative automotive fuels." *Id.*

<sup>331</sup> See 59 FR 24014, 24016-24017 n.62, 79, 91, 98 and accompanying text.

<sup>332</sup> E.g., carbon monoxide, nitrogen oxides, hydrocarbons, chlorofluorocarbons, volatile organic compounds, radioactive particles, particulate matter, and aerosols. 59 FR 24014, 24019.

<sup>333</sup> Measuring each of those factors itself requires an analysis of numerous chemical compounds. 59 FR 24014, 24019.

<sup>334</sup> 59 FR 24014, 24019 n.139.

<sup>335</sup> 59 FR 24014, 24020.

<sup>336</sup> Ford (Tr.), 179.

<sup>337</sup> Chrysler (Tr.), 182; Ford (Tr.), 180.

<sup>338</sup> Ford (Tr.), 186.

<sup>339</sup> AGA/NGVC, G-6, 9, (Tr.), 180, 190; AMI (Tr.), 189; Boston Edison, G-25, 9-10, (Tr.), 176-77, (Supp.), 7-8; CAS, G-17, 4, (Tr.), 174-75, 178, (Supp.), 2-3; DOE (Tr.), 172; EIA/EEU-SD, H-2, 1 ("concerned" that list of factors omits reference to vehicle's emissions certification rating); NAFA, G-20, 3-5, (Tr.), 170-71, 186-87; UCS, G-16, 2-3.

<sup>340</sup> *Id.* Another commenter expressed no opinion but appeared to support disclosing the emission level to which the vehicle had been certified. EPA (Tr.), 177. One commenter stated that AFV labels should identify whether the vehicle had been certified to California's more stringent emission standards. UCS, G-16, 2-3. While this information could be useful to some consumers, other consumers could be confused by information about state emission certification on a federal cost-benefit label.

<sup>341</sup> In sunlight, HC combines with nitrogen oxides to form ozone (a major component of smog). According to EPA, "[o]zone irritates the eyes, damages the lungs, and aggravates respiratory problems. It is our most widespread and intractable urban air pollution problem. A number of exhaust hydrocarbons are also toxic, with the potential to cause cancer." B-31, 2.

<sup>342</sup> CO "reduces the flow of oxygen in the bloodstream and is particularly dangerous to persons with heart disease." *Id.*

As opposed to the Tier 1 standards, which apply to all applicable new motor vehicles, standards for "clean-fuel vehicles" are mandated for use, at present, in two EPA programs: the California Pilot Test program and Clean Fuel Fleet Program.<sup>352</sup> EPA staff has informed the Commission, however, that it expects that vehicles meeting these standards will not be restricted to these programs (e.g., some state programs require acquisition of clean fuel vehicles).

The commenters supporting this option cited several reasons why this information should be included on AFV labels. First, because each AFV will be certified to a specific classification, certification levels provide a simple way of comparing different AFVs.<sup>353</sup> Second, the information could be useful and important to some consumers likely to consider AFV acquisitions (e.g., fleet operators and environmentally-concerned consumers).<sup>354</sup> Third, requiring disclosure of objective data allows consumers to evaluate competitive advertising and marketing claims regarding an AFV's environmental performance.<sup>355</sup>

EPA 92 also gives special attention to the fact that the environmental performance of alternative fuels differ, and that those differences need to be explained to consumers. For example, the drafters of EPA 92 noted that all alternative fuels "have different strengths, weaknesses, prices, emissions, and regional niches \* \* \*".<sup>356</sup> The record also indicates that comparative information regarding alternative fuels will be necessary for consumers considering AFV acquisitions. Several commenters noted that environmental performance will be a major factor motivating some consumers to consider AFV acquisitions, and that those consumers would need comparative information to evaluate advertising and marketing claims. Further, DOE's information brochure does not compare the

environmental performance of different alternative fuels. Instead, the brochure contains a general statement that: "Generally speaking, all alternative fuels produce lower amounts of air toxics and ozone-forming emissions than does gasoline."<sup>357</sup>

After reviewing EPA 92's legislative history and the commenters' statements, the Commission believes that including certain environmental performance information is appropriate, feasible, and consistent with the statute's legislative purpose. As a result, the Commission has tentatively determined that information regarding a vehicle's environmental performance, expressed in terms of the emission standard to which the vehicle has been certified, should be disclosed on labels for new covered AFVs.<sup>358</sup> Under the Commission's revised proposal, AFV labels for new covered vehicles would identify whether the vehicle had been certified as meeting an EPA emissions standard.<sup>359</sup> For vehicles which had not been so certified, manufacturers would place a mark in the box indicating that fact.<sup>360</sup> For those vehicles which had been certified as meeting an emissions standard, manufacturers would place a mark in the appropriate box indicating that fact, and then indicate on a graphic the standard to which the vehicle had been certified. The graphic would depict seven EPA emissions standards from Tier 1 to ZEV. Prior to being offered for acquisition to consumers, manufacturers of such vehicles would identify the emission certification standard<sup>361</sup> on that graphic by placing a caret above the applicable standard.<sup>362</sup> The label would also contain a statement advising consumers that the overall environmental impact of driving a particular vehicle includes factors not measured by the EPA standard.

In comments filed after the Workshop, AAMA offered six reasons opposing disclosure of emission certification levels on AFV labels (which was discussed extensively at the Workshop).

The Commission considered each of these concerns while developing this revised proposal. Three of those reasons pertained to whether the information would be misleading to consumers: (1) Requiring such disclosure may create the inaccurate impression that only AFVs meet low emission standards, "thus precluding a fair comparison and potentially putting low emitting gasoline vehicles at a sales disadvantage";<sup>363</sup> (2) emission certification values offer an incomplete picture of a vehicle's environmental performance;<sup>364</sup> and (3) disclosing tailpipe emissions standards presupposes consumers are only concerned with urban smog, thus misleading consumers who believe the vehicle with the lowest standard is the most environmentally friendly.<sup>365</sup>

As to those reasons, however, the Commission notes that environmental performance (as measured by emission standards) is cited by AFV manufacturers and other interested parties in specification sheets and other promotional material in a manner not easily amenable to comparisons.<sup>366</sup> Further, although consumers may be concerned about more than urban smog, tailpipe emission standards were established by Congress based on an explicit determination that regulating tailpipe emissions is an "effective

<sup>363</sup> AAMA (Supp.), G-7, 1-2. AFV labels may mislead fleet consumers "who, if relying on the alternative fuel label, fail to realize that low emitting gasoline vehicles may be available." *Id.* at 2.

<sup>364</sup> AAMA (Supp.), G-7, 2.

<sup>365</sup> *Id.*

<sup>366</sup> See, e.g., Chrysler, Plymouth Acclaim and Dodge Spirit FFV (no model year listed), B-29, back, undated ("[R]educes smog-forming emissions by at least 30 percent, and in many cases by as much as 50 percent, compared to gasoline run counterparts. In addition, toxic emissions can be reduced by as much as 50 percent."); Chrysler, Chrysler Corporation's [CNG] Vans & Wagons (no model year listed), B-30, inside front cover, undated ("Dodge [CNG] Vehicles will meet or beat all applicable emission standards up to and including California's requirements for Ultra Low Emission Vehicles (ULEV). CNG-fueled Dodge vans and wagons produce significantly less emissions of nonmethane hydrocarbons, carbon monoxide and oxides of nitrogen than similar gasoline powered vehicles."); Ford, Taurus passenger car FFV, B-26, front, March 4, 1993 ("Emission Levels: Compared to gasoline vehicles, an ozone benefit of 30% is projected for an FFV when operating on M85.").

See also Clean Fuels Task Force of Western Liquid Gas Association, LPG: An Alternate Clean Air Motor Fuel With Significant Environmental and Economic Advantages, B-24, 2, May 1992 ("Use of LPG as a motor fuel virtually ELIMINATES PARTICULATES, the gasoline and diesel carbon residue that makes up 25 percent of the 'brown cloud.' \* \* \* An [EPA] test of a LPG-fueled Ford V8 full size sedan showed hydrocarbon emissions 29 percent cleaner than the accepted standard. Nitrogen oxides were down 57 percent, and carbon monoxide emissions 93% better than the then Federal standard.").

<sup>352</sup> The California Pilot Test Program requires that vehicle manufacturers in California produce and sell specified minimum numbers of clean fuel vehicles. The Clean Fuel Fleet Program requires that a percentage of new vehicles acquired by certain fleet owners located in covered areas meet "clean-fuel fleet vehicle emission standards." Fleet Standards Rule, 59 FR 50042, Sept. 30, 1994.

<sup>353</sup> Boston Edison (Supp.), G-17, 8; CAS (Supp.), G-17, 2; NAFA (Tr.), 186-87.

<sup>354</sup> CAS (Supp.), G-17, 2; DOE (Tr.), 172; NAFA (Tr.), 170-71.

<sup>355</sup> CAS (Supp.), G-17, 2; NAFA, G-20, 4-5.

<sup>356</sup> H. Rep. No. 102-474(I), 102d Cong., 2d Sess. 136, reprinted in 1992 U.S.C.A.N. 1953, 1959 (emphasis added). In addition, environmental performance is listed first in the list of factors to be addressed by DOE's information package. 42 U.S.C. 13231 (Supp. IV 1993).

<sup>357</sup> B-3, 15. That statement is repeated in the section devoted to each of the featured fuels.

<sup>358</sup> The Commission does not propose requiring disclosure of this information on labels for used covered AFVs. As noted previously, comparative information could vary significantly with a vehicle's condition. Requiring disclosure of such information on used vehicles could therefore be misleading to consumers. See *supra* section III(C)(1)(d).

<sup>359</sup> EPA has not yet issued emission standards and certification test procedures for certain fuels (e.g., hydrogen and electricity).

<sup>360</sup> See Figures 4 and 5 at the end of this SNPR.

<sup>361</sup> See proposed rule § 309.1(n) (defining "emission certification standard").

<sup>362</sup> Figures 4 and 5 at the end of this SNPR are sample labels indicating a vehicle certified as meeting EPA's LEV emission standard.

means" of controlling vehicle emissions.<sup>367</sup> For all these reasons, the Commission concludes that informing consumers of applicable standards is appropriate. The Commission also notes, however, that the full fuel-cycle environmental impact of driving a particular vehicle includes an evaluation of other factors. The Commission believes that an effective way of addressing that fact is by accompanying the emissions information with a strong disclosure putting that information into perspective. As a result, the proposed label formats for new covered vehicles include the statement that "The overall environmental impact of driving this vehicle includes many factors not measured by this standard."

AAMA also raised three other problems with displaying this information on a label: (1) Displaying the certification levels themselves could be unclear to consumers;<sup>368</sup> (2) displaying the information comparatively "would be complicated and could lead to information overload and general confusion";<sup>369</sup> and (3) disclosure of certification levels is required by existing regulations.<sup>370</sup> As to label design, the proposed label formats illustrated in Figures 4 (for dedicated vehicles) and 5 (for dual-fueled vehicles) convey useful information in a clear, simple format. The Commission also notes that, unlike its revised labeling proposal, other Federal regulations do not require disclosure of information regarding environmental performance in a comparative fashion, and the disclosures which are required are located in the engine compartment.<sup>371</sup>

The Commission also has concluded that a reasonable recordkeeping requirement is necessary to ensure compliance with this provision. Accordingly, the proposed rule requires that manufacturers maintain records for three years demonstrating compliance with the proposed rule.<sup>372</sup>

*b. Specific data disclosures considered but not proposed.* As noted previously, EPA 92 directs the Commission to issue labeling requirements only "to the greatest extent practicable," taking into account the problems associated with developing and publishing such information and the simple label format. Accordingly, in developing this revised AFV labeling proposal, the Commission assessed the practicality of requiring disclosure of information pertaining to all the factors cited in the comments. As to the following factors, the Commission has tentatively determined that the level of detail necessary to convey balanced, accurate objective information to consumers (i.e., by reference to some rating or empirical value) cannot be contained on the "simple" label envisioned by Congress. In all such cases, the Commission felt constrained by considerations of information overload,<sup>373</sup> the lack of standards upon which to base required disclosures, and the easy availability of such information through other sources.

(1) *Operating costs.* For example, CAS proposed that the Commission require that operating costs be disclosed on AFV labels so that consumers will be aware "if operating costs of an AFV will be significantly different than a comparable conventional vehicle."<sup>374</sup> CAS further suggested that a 1991 study published by DOT's Federal Highway Administration ("FHWA") could form the basis for this disclosure.<sup>375</sup> FHWA's report estimated the cost per mile of owning and operating eight categories of conventional fueled automobiles, vans, and light trucks.<sup>376</sup> These estimates were based on aggregating five categories of ownership costs (e.g., depreciation, finance charges, and insurance) and seven operating costs

(e.g., maintenance, fuel, and taxes).<sup>377</sup> The cost estimates were from one metropolitan region (i.e., the Baltimore, Maryland, suburbs).<sup>378</sup> CAS stated that by using that report as a baseline and adjusting for inflation, "a reasonable estimate can be made comparing the operating costs of AFVs and gasoline powered vehicles in each size class."<sup>379</sup> Under its proposal, the AFV labels would state, "Operating costs of this vehicle are expected to be at least 25% higher (or lower) than gasoline powered vehicles in its size class."<sup>380</sup>

The Commission believes that expressing this information objectively (e.g., "operating this AFV costs 18 cents/mile") or comparatively (e.g., "operating this AFV costs 10% more than a comparable conventional-fueled vehicle") could help consumers make reasonable choices and comparisons. Accordingly, it has considered whether balanced, accurate information about that factor could be contained on a simple label. After considering the record, however, the Commission has tentatively determined that the problems associated with developing and publishing this information outweigh its usefulness to consumers at this time.

Objective ways of reasonably estimating AFV operating costs have not yet been developed or technically proven, and the lack of general experience with these new technologies makes what information is available problematic and thus possibly misleading.<sup>381</sup> For example, until economies of scale begin to take effect, potentially-higher AFV operating costs may be mitigated by financial incentives or tax advantages<sup>382</sup> offered to consumers acquiring AFVs. The variability of these financial incentives could vary, further complicating the analysis. As a result, the Commission believes that a disclosure as to this factor would involve too many intricate variables and is not appropriate for a label.

For similar reasons, the Commission also notes that relying on information reported in the 1991 DOT/FHA report or other authority for such AFV disclosures could be problematic at this

<sup>367</sup> S. Rep. No. 101-228, 101st Cong. 89, reprinted in 1990 U.S.C.A.N. 3385, 3474. See also *id.*

("Control on emissions from mobile sources will be an important part of the efforts to attain healthy air . . . for a simple reason: mobile vehicles are the largest source of ozone and carbon monoxide pollution."); and NAFA (Tr.), 187 (because Clean Air Act is based on exhaust standard, "it makes sense to provide that information to the public and to the consumer.").

<sup>368</sup> *Id.*

<sup>369</sup> *Id.*

<sup>370</sup> *Id.*

<sup>371</sup> See, e.g., 40 CFR 86.094-35(a)(1)(i) (for 1994 model year light duty vehicles, "[a] permanent, legible label shall be affixed in a readily visible position in the engine compartment").

<sup>372</sup> See proposed rule section 309.23.

<sup>373</sup> AAMA (Tr.), 164-65 ("[W]e feel there is an enormous amount of information that a consumer has to know about . . . [AFVs] including electric vehicles, and if any attempt is made to put every factor on the label it's going to end up information overload and do nothing but confuse the consumer."); Ford (Tr.), 175-76 (sticker is not appropriate place to provide detailed information; consumers need info before they get to the dealership).

<sup>374</sup> CAS, G-17, 3, (Tr.), 166, (Supp.), 3. EPA's fuel economy label discloses the vehicle's annual fuel costs, but that figure does not include other operating costs. EPA (Tr.), 166.

<sup>375</sup> CAS, G-17, 3, (Tr.), 167, 169. See Cost of Owning and Operating Automobiles, Vans & Light Trucks, Report No. FHWA-PL-92-019, prepared by Jack Faucett Associates (April 1992). Commission staff placed a copy of this report on the public record of this proceeding. See Document B-4.

<sup>376</sup> The eight categories are: subcompact, compact, intermediate, and full-size automobiles; mini and full-size vans; and compact and full-size pickup trucks.

<sup>377</sup> B-4, 5-8.

<sup>378</sup> B-4, 3.

<sup>379</sup> CAS, G-17, 3.

<sup>380</sup> *Id.*

<sup>381</sup> Boston Edison (Supp.), G-26, 11; RFA (Tr.), 167.

<sup>382</sup> See, e.g., 26 U.S.C. 30, 179A (Supp. IV 1993) (creating tax credits for qualified electric vehicles and deductions for clean-fuel vehicles and certain refueling property).

time.<sup>383</sup> For example, findings in the 1991 DOT/FHA report are dated and thus will likely not be accurate for consumers considering AFV acquisitions many years later. The report also is not updated on regular intervals (the first and only prior report was published in 1984)<sup>384</sup> and the Commission understands that DOT/FHA has no plans to update the report in the near future.

The Commission notes, however, that DOE has addressed the variability of operating costs in a general way in its consumer information brochure. For each of the featured fuels the brochure has a designated category discussing "costs." That discussion offers cost information about fuel, conversions, vehicle, service, and diagnostic equipment.<sup>385</sup> The Commission also expects that some general information regarding this factor will likely be disclosed voluntarily by AFV manufacturers, dealers, and conversion companies. Accordingly, after considering the record, the Commission has tentatively concluded that requiring disclosure of specific data as to this factor is not practicable. As described in section III(C)(2)(c)(1), *infra*, the Commission concludes that for purposes of this labeling rule, it is appropriate to advise consumers to consider costs when evaluating AFVs, without providing specific data on this factor.

(2) *Domestic content of the fuel.* Because information on the domestic content of fuel might be of interest to some consumers interested in the societal benefit of promoting domestic industries, the Commission has considered the propriety of requiring disclosure of such information on AFV labels. Three commenters suggested that the AFV label indicate the extent to which the alternative fuel powering a particular AFV was produced domestically.<sup>386</sup> Such a disclosure would help promote energy independence and energy security, key goals underlying EPA 92.<sup>387</sup> Three other commenters opposed such a disclosure because it would not be practicable.<sup>388</sup>

After considering the record, the Commission has tentatively determined

that requiring disclosure of objective information as to this factor is not practicable on the AFV label. The Commission is aware of no consensus standards for estimating the domestic content of transportation fuels<sup>389</sup> and government reports which appear to address this topic do not cover all alternative fuels.<sup>390</sup> In any event, the Commission concludes that a disclosure as to this factor, even if practicable, is not feasible because of the constraints of the label format.<sup>391</sup> The Commission notes, however, that DOE's information brochure includes a general discussion of domestic content for each of the featured fuels. For example, the brochure states that ethanol's domestic content is "[c]urrently as high as 100% for pure ethanol, depending on world market price."<sup>392</sup> Accordingly, as described in section III(C)(2)(c)(1), *infra*, the Commission concludes that consumers should be advised to consider this factor when evaluating AFVs, but that labels should not include specific data on this factor.

(3) *Fuel economy/energy efficiency.* Boston Edison suggested that the Commission require that "fuel economy/energy efficiency" information (expressed as miles per gallon) be disclosed on AFV labels.<sup>393</sup> In developing this SNPR the Commission has considered whether requiring disclosure of such information would be useful to consumers. However, EPA, which is responsible for compiling fuel

economy information for the federal fuel-economy labeling program, has plans to establish labeling requirements for AFVs powered by all alternative fuels.<sup>394</sup> Therefore, the Commission concludes that requiring fuel economy information on its labels would be duplicative, and possibly confusing. It has thus tentatively determined that such information should not be disclosed on its AFV labels.

(4) *Appropriate fuel, fuel availability, fuel grade, and refueling time.* The Commission received comments suggesting that disclosure of other information (e.g., appropriate fuel for the vehicle,<sup>395</sup> fuel availability,<sup>396</sup> fuel grade,<sup>397</sup> and refueling time<sup>398</sup>) should be required on AFV labels. The Commission notes that the fuel to be used in the vehicle will be prominently displayed on EPA's fuel economy labels. Although not yet required for all alternative fuels, as noted previously, EPA plans to issue them. In any event, fuel type is easily ascertainable. For example, AFV manufacturers will have a strong incentive to inform consumers of the correct fuel for particular vehicles. Thus it is not necessary to require such disclosures in this regulation or to duplicate disclosures contained in EPA required labels. As to the remaining factors, the Commission believes that disclosures are impractical because all useful information simply cannot fit in a simple label. The Commission also is not aware of a standard methodology or established practice for calculating any of those factors, and no commenter addressed that subject.

The Commission notes, however, that fuel availability and refueling methods (including refueling time for electricity and CNG) are addressed in the DOE brochure.<sup>399</sup> Accordingly, as described in section III(C)(2)(c)(1), *infra*, the Commission concludes that consumers should be advised, as a general matter, to consider those factors when evaluating AFVs. In addition, because the Commission has determined that consumers need basic comparative

<sup>389</sup> NPGA (Tr.), 203.

<sup>390</sup> Boston Edison stated that the data necessary to determine the domestic content of motor vehicle fuel is published by DOE's Energy Information Administration ("EIA"). Boston Edison (Supp.), G-26, 11. EIA's reports, though, do not appear to cover all the alternative fuels. See Boston Edison (Supp.), Exhibit 4 (no data for ethanol, methanol, hydrogen, or LPG).

<sup>391</sup> RFA generally supported a disclosure as to this factor but noted at the Workshop that

"I question whether or not we want that to be [on] a label on the vehicle because I think we've added enough stuff now that it's really a scroll \* \* \*. But perhaps maybe the reference to the brochure and then maybe the DOE since they would have access to the EIA information readily available, maybe it should go into the information brochure \* \* \*. I think it would be too difficult to keep it up in the context of a label."

RFA (Tr.), 207-08.

<sup>392</sup> B-3, 18.

<sup>393</sup> In its initial comment Boston Edison stated that energy efficiency could be expressed as "efficiency per BTU" or "efficiency per mile," but did not otherwise define a basis for these disclosures. Boston Edison, G-26, 3-4. See also Boston Edison (Supp.), G-26, 5-7. Although not stated, it appears that this suggestion was limited to labeling for electric vehicles. At the Workshop, CAS supported a disclosure for this factor. CAS (Tr.), 194, but later indicated that it was satisfied that EPA fuel economy labels will give consumers sufficient information on the comparative energy efficiency of competing vehicles during driving. CAS (Supp.), G-17, 3.

<sup>394</sup> EPA, H-4, 1, 3.

<sup>395</sup> API, G-25, 5.

<sup>396</sup> CAS, G-17, 3. AGA/NGVC stated that the AGA's manual of available CNG fueling stations should be "referenced," but did not indicate whether that should be on the AFV label or in the DOE brochure. AGA/NGVC (Tr.), 195. The Commission notes that the DOE brochure lists AGA and NGVC as sources for additional information about CNG-powered AFVs. See B-3, 23.

<sup>397</sup> MC-MD, H-7, 2. See also NACAA (Tr.), 196 (to the extent there are different grades, "we don't know all the fuels out there.").

<sup>398</sup> DOE, H-10, 6; (Tr.), 172-73.

<sup>399</sup> See B-3, 16 (electricity), 18 (ethanol), 20 (methanol), 22 (CNG), 24 (propane).

<sup>383</sup> CAS suggested that other reports ("such as the one by the AAA") could serve as the authority for this disclosure if the DOT/FHA report is not updated. CAS, G-17, 3. Reliance on other reports could be similarly problematic.

<sup>384</sup> B-4, 3.

<sup>385</sup> B-4, 17-25.

<sup>386</sup> Boston Edison (Supp.), G-26, 9-11, 12, (Tr.), 202; RFA, G-5, 5; UCS (Tr.), 201-2, 208.

<sup>387</sup> H. Rep. No. 102-474(1), 102d Cong., 2d Sess. 132.

<sup>388</sup> AMI (Tr.), 206; API (Tr.), 201; NPGA (Tr.), 203.

information while refueling, the principal component of alternative fuels is addressed in the Commission's Fuel Rating Rule<sup>400</sup> and this SNPR.<sup>401</sup>

**c. Descriptive disclosures on AFV labeling.**—(1) *List of comparative factors.*—The Commission proposed that AFV labels disclose general, descriptive information pertinent to all consumers considering an AFV purchase.<sup>402</sup> These descriptive disclosures would comprise the second and third parts of the AFV label. The second part of the AFV label would contain a form notice stating, in substance, that vehicles powered by different fuels have different costs and benefits, and that consumers should consider those differences when considering an AFV purchase. The Commission believed that this information could help consumers evaluate information disclosed on other labels, in advertising, and from other sources.<sup>403</sup> The Commission also believed that requiring a list of factors consumers could use to consider and compare AFVs would encourage AFV manufacturers, conversion companies, and dealers to provide additional information to meet consumers' expectations and needs.<sup>404</sup>

Specifically, the label would list the following six factors consumers should consider before purchasing an AFV: Fuel type (i.e., the fuel or fuels that power the vehicle); operating costs; environmental impact; health and safety; on-road performance (i.e., cruising range, cold start capability and refueling time); and fuel availability.<sup>405</sup> Each factor would be supplemented with a brief explanation of how it is relevant to an AFV purchase. For example, for fuel type, the label would contain a statement that AFVs are designed to be powered by a certain fuel or fuels, and that consumers should be aware of which fuel(s) powers that particular AFV. For operating costs, the label would state that the total cost of operating an AFV includes, among other

things, fuel and maintenance costs, and that those costs for AFVs are different than for gasoline-fueled vehicles and can vary considerably. A similar format was proposed for the four other comparative purchasing factors (i.e., environmental impact,<sup>406</sup> health and safety,<sup>407</sup> on-road performance,<sup>408</sup> and fuel availability<sup>409</sup>).

Twenty-two commenters addressed this aspect of the Commission's proposal. Five commenters supported the proposal without modification.<sup>410</sup> AGA/NGVC stated that it "[d]id not disagree with the list" but was "concerned" that such a requirement could "unnecessarily raise consumers (sic) concerns" about AFVs.<sup>411</sup>

Six other commenters opposed or criticized the proposal. Of those, Boston Edison stated that alerting consumers to issues they should consider before purchasing an AFV without providing comparative information on those factors did not fulfill EPA 92's intent.<sup>412</sup> AAMA and ETC stated that the list format would not be useful to consumers, and AAMA and NPGA stated that the list contained too much information and would overwhelm consumers.<sup>413</sup> NADA stated that the information should be contained in an information booklet.<sup>414</sup> Texas ADA opposed all new labeling generally and

specifically opposed including the list on any AFV label.<sup>415</sup>

Ten comments supported the proposal in general but suggested modifications to certain aspects. Two of those comments suggested omissions from the list. TVA suggested that fuel availability be omitted because information regarding that factor could become outdated quickly.<sup>416</sup> DOT/NHTSA stated that safety should be omitted (because all motor vehicles must be labeled to indicate that they conform to applicable Federal safety standards) and replaced with a notice that safety information is available from NHTSA's Auto Safety Hotline.<sup>417</sup>

Three comments suggested that certain factors be added to the list. PCC stated that the list should advise consumers to compare the AFV's purchase price to a comparable gasoline-powered vehicle.<sup>418</sup> EIA/EEU-USD suggested that the label include information about the AFV's emissions certification rating, where consumers can find the rating, and some reference to its significance in meeting clean-air goals.<sup>419</sup> UCS stated that the list should include energy security, and that the label should explain that, "in evaluating the energy security impacts of a particular AFV, consumers should consider its impact on the U.S.'s dependency on energy imports from politically unstable regions of the world."<sup>420</sup>

API, Unocal and UCS supported listing environmental impact as a factor, but suggested that the explanation of its relevance be modified. Specifically, Unocal suggested that consumers be advised to consider how the alternative fuel under consideration compares to reformulated gasoline<sup>421</sup> and other alternative fuels, and not just conventional gasoline.<sup>422</sup> API suggested that consumers be advised to consider all "relevant and objective" environmental costs (instead of simply "all environmental costs") as compared to conventional or reformulated gasoline (instead of simply "gasoline").<sup>423</sup> UCS

<sup>406</sup> For environmental impact, the labels would state that all vehicles (conventional and AFVs) affect the environment in ways both direct (e.g., how the vehicle processes the fuel) and indirect (e.g., how the fuel is produced and brought to market). Accordingly, in evaluating the environmental impact of a particular AFV, consumers should consider all environmental costs associated with driving a vehicle powered by that alternative fuel, as well as any benefits as compared to gasoline. *Id.*

<sup>407</sup> For health and safety, the labels would notify consumers that different fuels raise different health and safety concerns. As a result, consumers should consider any health and safety issues associated with normal driving and refueling, and in the event of an accident. *Id.*

<sup>408</sup> For on-road performance, the labels would advise consumers that vehicles powered by different fuels will differ in terms of their cruising range (i.e., how many miles the vehicle will go on a full supply of fuel), cold start capabilities (i.e., ability to start a cold engine), and refueling and/or recharging time (i.e., how long it will take to refill the vehicle's fuel tank to full capacity). *Id.*

<sup>409</sup> For fuel availability, the labels would advise consumers to determine whether a refueling and/or recharging infrastructure has been developed for the AFV under consideration which meets their driving needs. *Id.*

<sup>410</sup> CAS, G-17, 3-4, (Supp.), 2, (Tr.), 166; Mobil, G-2, cover letter at 1 and 5-6; NAFA, G-20, 3; Nebraska EO, H-9, 1; RFA, G-5, 5. One other commenter indicated general support for all aspects of the Commission's proposal. Texas RRC, H-3, 1.

<sup>411</sup> AGA/NGVC, G-6, 11.

<sup>412</sup> Boston Edison, G-26, 6-7, 8-9.

<sup>413</sup> AAMA, G-7, 1-2; ETC, G-24, 6; NPGA, G-18, 7.

<sup>414</sup> NADA, G-19, 2.

<sup>415</sup> It appears that Texas ADA may have interpreted the Commission's proposal to require objective disclosures as to each of the six factors. Texas ADA, G-11, 1-3.

<sup>416</sup> TVA, H-5, 2.

<sup>417</sup> DOT/NHTSA, H-1, 1-2.

<sup>418</sup> PCC, G-22, 2.

<sup>419</sup> EIA/EEU-USD, H-2, 1.

<sup>420</sup> UCS, G-16, 2.

<sup>421</sup> Reformulated gasoline is specially refined gasoline with low levels of smog-forming volatile organic compounds and hazardous air pollutants. The 1990 Clean Air Act Amendments requires sale of reformulated gasoline in the nine smoggiest areas.

<sup>422</sup> Unocal, G-9, 2.

<sup>423</sup> API, G-25, 6-7.

<sup>400</sup> See 16 CFR 306.10(a) (1994) (requiring retailers to post automotive fuel ratings).

<sup>401</sup> See proposed rule section 309.15.

<sup>402</sup> 59 FR 24014, 24020.

<sup>403</sup> *Id.* The Commission reached a similar conclusion when it issued labeling requirements for used motor vehicles. In that proceeding, the Commission concluded that requiring disclosure of a standard list of purchasing considerations could convey useful information to consumers. See Used Motor Vehicle Trade Regulation Rule, Statement of Basis and Purpose, 49 FR 45692, 45706, Nov. 19, 1984 (list of major defects that can occur in used motor vehicles provides consumers with a framework for evaluating and comparing warranty coverage and counteracts dealer misrepresentations).

<sup>404</sup> 59 FR 24014, 24020.

<sup>405</sup> 59 FR 24014, 24020.

stated that in evaluating environmental impact, consumers should consider certain different emissions categories (e.g., ozone precursors and carbon monoxide).<sup>424</sup>

Comments from three government agencies suggested further modifications within the basic proposed format. DOE suggested that characterizations for four of the factors (i.e., operating costs, health and safety, on-road performance and fuel availability) be consolidated into a "short paragraph, because it will be difficult to say anything conclusive about these factors in such a limited amount of space. The paragraph could indicate that the performance of AFVs in those areas maybe (sic) different from similar gasoline-fueled vehicles."<sup>425</sup> It also suggested that separate characterizations for the other two factors (i.e., fuel type and environmental performance) should remain, but environmental performance should be expressed by disclosing the EPA emission level to which the AFV has been certified.<sup>426</sup>

CEC stated that the list should explain the significance of each factor and present, "at least in generic terms," comparative characteristics of the alternative fuels in terms of these factors.<sup>427</sup> EPA generally supported the list of comparative factors, but cautioned that information should be available from other sources of information for each of the factors listed on the label.<sup>428</sup> It also suggested that consumers be advised to consider acceleration rates and refueling methods when evaluating on-road performance, and noted that two of the proposed factors (fuel type and operating costs) will be disclosed on methanol and CNG vehicles under its new fuel economy labeling regulations.<sup>429</sup>

The standard list of factors for comparisons proposed in the NPR does not, by itself, disclose comparative cost-benefit information. In developing this revised proposal the Commission has considered whether including such a list on AFV labels would constitute "appropriate information with respect

to costs and benefits" (as that phrase is used in section 406(a)), and would be useful to consumers. As noted, the majority of the commenters indicated that this approach would provide consumers with useful information. In addition, the Commission cannot, as a practical matter, require disclosure of comparative information as to every relevant factor given the constraints of a simple label format. Accordingly, the Commission has again concluded that the AFV labels should contain a standard list of factors consumers should consider before acquiring an AFV.

The Commission also has determined to modify the list and explanatory statements proposed in the NPR to reflect other aspects of this SNPR. For example, the label format for new covered vehicles should reflect the fact that the Commission is proposing objective disclosures as to cruising range and environmental performance. Thus, for those vehicles, the Commission proposes that the discussion of those factors be omitted from the list. Similarly, the Commission proposes to omit health and safety from the list because, as discussed below,<sup>430</sup> the proposed AFV label will refer consumers seeking safety information to NHTSA's Auto Safety Hotline.

The Commission also proposes to add a new factor to the list addressing energy security and the fuel's domestic content. As noted previously, objective information regarding that factor would be useful to consumers but cannot feasibly be displayed on a label.<sup>431</sup> However, DOE's information brochure includes a general discussion addressing that topic for each of the featured fuels. For this factor, the Commission proposes that the label advise consumers that alternative fuels can reduce U.S. reliance on imported oil, especially if all the fuels' components are produced in this country, and that they should consider whether the fuel powering the vehicle is typically produced domestically or is imported.

The Commission also proposes retaining the remaining four factors (fuel type, operating costs, on-road performance, and fuel availability) because all four will likely be important for consumers to consider before purchasing an AFV.<sup>432</sup> Information about the AFV's fuel type will be available directly from the dealer; and

the other factors are addressed in DOE's information brochure.<sup>433</sup> The Commission proposes no change to the explanatory statement described in the NPR for fuel type, operating costs, and fuel availability. For on-road performance, however, the Commission proposes (pursuant to EPA's suggestion) adding references to differences in acceleration rates and refueling methods. To reflect that change, that category is renamed "Performance/Convenience."

Labeling for used covered vehicles would follow a similar format. Those labels would advise consumers to consider the following six factors before selecting a used AFV: Fuel type, operating costs, environmental impact, performance/convenience, fuel availability, and energy security/domestic content of the fuel. Explanatory statements for four of those six factors (i.e., fuel type, operating costs, fuel availability, and energy security/domestic content) would be identical to the statements on labels for new covered vehicles. Explanatory statements as to the final two factors (environmental impact and performance/convenience) would be modified to reflect the fact that those labels would not disclose objective information. Thus for environmental impact, the label would state that all vehicles (conventional and AFVs) affect the environment directly (e.g., tailpipe emissions) and indirectly (e.g., how the fuel is produced and brought to market), and that consumers should compare the environmental costs of driving an AFV with a gasoline powered vehicle. For performance/convenience, the explanatory statement would state that vehicles powered by different fuels differ in terms of cruising range, cold start capabilities, refueling and/or recharging time, acceleration rates, and refueling methods.

The Commission has also tentatively determined that other suggested additions or modifications to this part of the AFV label may not be appropriate. For example, the revised proposal does not address reformulated gasoline because the Commission is aware of no readily-available information source which compares the properties of alternative fuels to that fuel. Similarly, reference advising consumers to compare an AFV's purchase price to a comparable gasoline-powered vehicle is omitted because consumers could be

<sup>424</sup> UCS, G-16, 2.

<sup>425</sup> DOE, H-10, 6, (Tr.), 173.

<sup>426</sup> *Id.*

<sup>427</sup> CEC, H-8, 9-10. CEC acknowledged "the difficulty in promulgating a uniform notice bearing substantive descriptions of factors such as fuel availability, particularly in view of the variations in refueling infrastructure and the evolving nature of the alternative fuels market." CEC, H-8, 10. CEC also did not give examples of how comparative characteristics for other pertinent factors could be expressed or displayed on a "simple" label.

<sup>428</sup> EPA, H-4, 2-4. EPA did not state that any of the proposed six factors should be removed from the list for this reason.

<sup>429</sup> *Id.*

<sup>430</sup> See *infra* section III(C)(2)(c)(2).

<sup>431</sup> See *supra* section III(C)(2)(b)(2).

<sup>432</sup> See 59 FR 24014, 24016 nn.68, 70, 75, 79 and 24017 nn.83, 87, 89, 97, 101, 102, 106 and accompanying text (ANPR commenters identifying those factors as being important to consumers).

<sup>433</sup> Although EPA fuel-economy labels disclose information regarding fuel type and operating costs, those labels are not yet required for AFVs powered by all alternative fuels. 59 FR 39638, 39639.

expected to consider that factor on their own.

(2) *Referral to other sources of information.* The Commission proposed that the third part of the AFV label contains a statement directing consumers to other sources of objective information regarding AFVs.<sup>434</sup> The Commission developed this proposal after considering the fact that while EPA 92 directed DOE to "produce and make available" an information package, the statute does not require AFV dealers or conversion companies to provide consumers with copies of the information package or to notify them of its availability.<sup>435</sup> Accordingly, the third part of the AFV label would contain a statement informing consumers that further information about alternative fuels and AFVs is available from DOE.

Twenty of the 37 commenters addressed this issue. Eleven commenters, including DOE, supported the proposal in its entirety.<sup>436</sup> DOE recommended that the AFV label advise consumers that they can obtain copies of DOE's consumer information package by calling the toll-free telephone number for DOE's National Alternative Fuels Hotline.<sup>437</sup> Five others supported the proposal but with modifications. Of those five, DOT/NHTSA recommended that the label advise consumers that they can call the toll-free telephone number for NHTSA's Auto Safety Hotline to obtain information regarding vehicle safety.<sup>438</sup> CAS suggested that the AFV label advise consumers that free copies of DOE's information brochure were available from the AFV dealer or conversion company.<sup>439</sup> NADA recommended that the label refer consumers to the DOE information package and EPA's Gas Mileage Guide.<sup>440</sup> NPGA suggested that the label also contain addresses and phone numbers of organizations and relevant industry associations where consumers may ask questions and obtain further information.<sup>441</sup> AAMA supported the concept of the proposal but recommended that AFV manufacturers be given the discretion to determine where the information is disclosed (i.e.,

on a dedicated label or combined with existing labels).<sup>442</sup>

Without addressing the merits of this aspect of the Commission's AFV labeling proposal, one comment (from TexasADA) opposed the proposal generally as part of its opposition to all new labeling.<sup>443</sup> This general opposition was based on TexasADA's belief that new labeling would create hazards during test driving.<sup>444</sup> Three comments stated that it was not possible to support or oppose the proposal because the DOE information brochure was not yet available for review.<sup>445</sup>

The referral statement proposed in the NPR does not, by itself, disclose cost-benefit information. In developing this revised proposal, the Commission has thus considered whether including a statement on the AFV label directing consumers to other sources of objective information regarding AFVs would help consumers make reasonable choices and comparisons. The Commission also considered whether including such a statement was feasible, given the constraints of a simple label format. After considering the record, the Commission believes that including a standard statement referring consumers to pertinent government information sources is consistent with section 406(a)'s legislative purpose.

The comments also indicated that a referral to objective information sources would be useful to consumers. The Commission concludes that, given the nature of the disclosure, consumers considering either new or used AFVs would find this statement equally relevant. Accordingly, the Commission has tentatively determined that a precise reference to DOE's consumer information brochure and NHTSA's vehicle safety hotline is appropriate on labeling for new and used covered AFVs. To implement that tentative determination, the label formats for new and used covered vehicles includes standard statements informing consumers that they can obtain (1) copies of a free consumer information brochure and general information about alternative fuels and AFVs by calling the toll-free telephone number for DOE's National Alternative Fuels Hotline, and (2) vehicle safety information by calling the toll-free telephone number for DOT/NHTSA's Auto Safety Hotline.<sup>446</sup>

### 3. Label Size and Format

In the NPR, the Commission announced its tentative determination that a label larger than that proposed for fuel dispensers would be needed to accommodate the greater number of required disclosures.<sup>447</sup> Accordingly, the Commission proposed requiring that AFV labels be 7½ inches wide by 11 inches high. Those dimensions are the same as for labels required by the Commission's Used Car Rule, which have adequate room to display effectively a large amount of information.<sup>448</sup>

Four commenters addressed this issue.<sup>449</sup> CEC and RFA stated that requiring a standard label format (i.e., one which disclosed the same information in the same order) would be most useful to consumers.<sup>450</sup> TexasADA stated that the Commission should not require the posting of AFV labels on windows because of possible hazards during test driving.<sup>451</sup> EPA noted that the proposed label size is larger than the dimensions of its fuel economy labels<sup>452</sup> and suggested that the Commission consider whether the AFV label's size and/or posting location could obstruct a driver's view during test driving.<sup>453</sup>

As noted, required labeling under the Commission's AFV labeling requirements must be "simple." Accordingly, in developing this revised proposal the Commission has considered how best to meet consumers' needs given the statutory and practical constraints of vehicle labeling. The Commission proposes that AFV labels be reduced from the size proposed in the NPR and measure 7 inches wide by 5½ inches high.<sup>454</sup> This reduction in label size will reduce a possible risk to safety, if any, associated with a label the size of the Buyers Guides required by the Used Car Rule,<sup>455</sup> yet also be large

<sup>434</sup> 59 FR 24014, 24021.

<sup>435</sup> 42 U.S.C. 13231 (Supp. IV 1993).

<sup>436</sup> Boston Edison, G-26, 9; CEC, H-8, 10; DOE, H-10, 6, (Tr.), 173-74; EIA/EEU-ISD, H-2, 1; ETC, G-24, 6; MC-MD, H-7, 2; NADA, G-20, 3; Nebraska EO, H-9, 1; RFA, G-5, 5, (Supp.), 1 (assuming industry has the opportunity to review the DOE brochure prior to publication); Sun, G-1, 2; Texas RRC, H-3, 1.

<sup>437</sup> DOE, H-10, 6, (Tr.), 173-74.

<sup>438</sup> DOT/NHTSA, H-1, 2.

<sup>439</sup> CAS (Supp.), G-17, 2, 4.

<sup>440</sup> NADA, G-19, 2.

<sup>441</sup> NPGA, G-18, 6.

<sup>442</sup> AAMA, G-7, 2.

<sup>443</sup> TexasADA, G-11, 1.

<sup>444</sup> *Id.*

<sup>445</sup> AGA/NGVC, G-6, 11; API, G-25, 6-7; Mobil, G-2, 6.

<sup>446</sup> See Figure 6 (new covered vehicles) and 8 (used covered vehicles) at the end of this SNPR.

<sup>447</sup> 59 FR 24014, 24020.

<sup>448</sup> 16 CFR 455.2(a)(2) (1994).

<sup>449</sup> API stated that label size and format issues could best be answered by AFV manufacturers and converters). API, G-25, 8. Two other commenters indicated general support of the Commission's proposal. EIA/EEU-ISD, H-2, 1; Texas RRC, H-3, 1.

<sup>450</sup> CEC, H-8, 11 ("the use of standard sizes and/or formats will facilitate use by consumers"); RFA, G-5, 5 (a standard format "will make comparisons by the consumer simple").

<sup>451</sup> TexasADA, G-11, 2.

<sup>452</sup> EPA fuel economy labels are rectangular in shape with a minimum height of 4.5 inches and a minimum length of 7 inches wide. 40 CFR 600.307-86(a)(1)(i) (1993).

<sup>453</sup> EPA, H-4, 4.

<sup>454</sup> See proposed rule §§ 309.20(b) (for new covered vehicles), 309.21(b) (for used covered vehicles).

<sup>455</sup> As part of its ongoing Regulatory Review of the Used Car Rule, the Commission is reviewing the format, including the size, of the Buyers Guides required under that Rule.

enough to accommodate all pertinent information in a readable format. After reconfiguring the size and format proposed in the NPR to reflect the comments and information to be disclosed, the Commission proposes that two-sided labels be posted on covered vehicles as described below.

The Commission proposes that information required to be disclosed by its AFV labeling requirements be displayed on a visible window surface in three label formats. The first label format would be for new covered AFVs designed to operate solely on alternative fuel. Figures 4 and 6 illustrate samples of this format; figure 4 (containing objective information particular to that vehicle) would appear on the front of the label, and figure 6 (containing general information) would appear on the back.

The second label format would be for new covered vehicles capable of operating on alternative fuel and on conventional fuel. Figures 5 and 6 illustrate samples of this format; figure 5 (containing objective information particular to that vehicle) would appear on the front, and figure 6 again would appear on the back. The third label format would be for used covered AFVs. Figures 7 and 8 illustrate samples of this format; figure 7 would appear on the front, and figure 8 would appear on the back.

The proposed rule also addresses general format issues common to all three labeling formats. For example, headlines and text for all labels are standard as illustrated in the sample labels.<sup>456</sup> In addition, no marks or information other than that specified in the proposed labeling requirements shall appear on any of the labels.<sup>457</sup>

#### 4. Consolidation

In the NPR, the Commission considered whether consolidating new AFV disclosures "with other labels providing information to the consumer" would be appropriate at the present time.<sup>458</sup> Consolidation as required by EPA 92 could be undertaken in one of two ways: either by incorporating new AFV disclosures into existing labels, or by incorporating existing disclosures into new AFV labels. As to the first category, the Commission tentatively concluded that it should not consolidate new AFV disclosures into existing

labels.<sup>459</sup> As to the second category, the Commission noted that regulations requiring the posting of vehicle labels providing information regarding fuel economy and costs, emissions certification compliance, and safety are in effect or under active consideration by other governmental bodies. Because consumers would have immediate access to this information in other required labels, the Commission similarly concluded that providing the same information on its AFV labels (in a different format) could confuse consumers and was therefore unnecessary.

Twelve commenters addressed this issue.<sup>460</sup> Three of those twelve commenters opposed or expressed concern about consolidation. TVA opposed all consolidation because it would provide no benefit to consumers.<sup>461</sup> EPA stated that new AFV information could not reasonably be incorporated into its fuel economy label because they already are "crowded."<sup>462</sup> NACAA stated that consolidation "probably makes sense," but "my experience in dealing [with] a lot with dealers is that they're not so full of stickers that dealers don't put on their own to add for options \* \* \*. So I don't think we've reached the saturation point."<sup>463</sup>

Eight other commenters suggested that any new information required to be disclosed by the Commission's AFV labeling requirements be incorporated into existing labels. Two commenters (Boston Edison and NADA) suggested that new information pertaining to AFVs be consolidated into the EPA fuel economy label because consumers currently rely on that label for information regarding fuel, fuel economy, and operating costs.<sup>464</sup> TexasADA stated that new information should be incorporated into the Monroney label.<sup>465</sup>

<sup>459</sup> 59 FR 24014, 24019.

<sup>460</sup> Two other commenters indicated general support with all aspects of the Commission's NPR proposal. EIA/EEU-USD, H-2, 1; Texas RRC, H-3, 1.

<sup>461</sup> TVA, H-5, 1.

<sup>462</sup> EPA (Tr.), 211 ("Everybody saw how crowded this (i.e., the EPA label) already was. I guess it depends on what type of information ultimately ends up whether we would have difficulties with consolidating the EPA's label. But we're looking at information overload right now."). DOE, in a comment responding to the Commission's ANPR, stated further that, "Survey work has indicated that the fuel economy label already contains too much information \* \* \*". DOE, E-10, 4.

<sup>463</sup> NACAA (Tr.), 215-216.

<sup>464</sup> Boston Edison (Supp.), G-26, 12, Ex. 5 (information regarding EPA emission standard, cruising range, and domestic fuel content should be incorporated into EPA label); NADA, G-19, 1.

<sup>465</sup> Texas ADA, G-11, 1. A "Monroney label" contains the information required by 15 U.S.C.

AAMA, Chrysler, Ford, and GM stated that allowing AFV manufacturers the flexibility of incorporating new AFV information into existing labels would "greatly reduce compliance costs and the production burden of installing another label."<sup>466</sup> Automobile manufacturers are "running out of room to add additional labeling" (because of existing and contemplated labeling requirements)<sup>467</sup> and allowing flexibility would "ensure the lowest cost to the consumer."<sup>468</sup> Requiring new AFV labels could also overload consumers with information, thus "not likely creat[ing] the desired impact on the consumer."<sup>469</sup>

One commenter (CAS) suggested that the Commission incorporate existing information (NHTSA determinations that the vehicle complies with or has been exempted from federal motor-vehicle safety standards) into its AFV labels.<sup>470</sup> CAS also suggested that the Commission require that this label be attached to EPA's fuel-economy label, so that information regarding fuel economy, cruising range, and emissions would appear in the same general area.<sup>471</sup> RFA stated that it did not oppose consolidation of AFV information into existing labels but suggested that all AFV related information should be kept in the same spot on each AFV.<sup>472</sup>

As noted previously, EPA 92 requires the Commission to consolidate its AFV labels with other labels providing information to consumers "where appropriate." In developing this revised proposal the Commission has thus considered the propriety either of incorporating the information the Commission will require for AFVs into existing labels (e.g., EPA's fuel economy label or the Commission's used car Buyers Guide), or of incorporating existing information into its AFV labels. For both options, the Commission notes that consolidation could help consumers by collecting pertinent information in a central location. Industries affected by the labeling

1231-1233 (disclosing, *inter alia*, each vehicle's make, model, identification number, and manufacturer's suggested retail price).

<sup>466</sup> AAMA, G-7, 2. Chrysler, Ford, and GM supported AAMA's comment on that point. Chrysler, G-13, 1; Ford, G-14, 1; GM, G-8, 3, 5. See also AAMA (Tr.), 210 (same).

<sup>467</sup> GM, G-8, 3.

<sup>468</sup> Chrysler, G-13, 1.

<sup>469</sup> GM, G-8, 4.

<sup>470</sup> CAS, G-17, 5; (Supp.), 6-7. CAS qualified its comment by stating that it was difficult to comment on the degree of consolidation without first knowing how much information the Commission require be disclosed. CAS, G-17 (Supp.), 6.

<sup>471</sup> CAS, G-17 (Supp.), 6.

<sup>472</sup> RFA (Supp.), G-5, 1.

<sup>456</sup> See proposed rule §§ 309.20(e) (for new covered vehicles), 309.21(e) (for used covered vehicles).

<sup>457</sup> See proposed rule §§ 309.20(b) (for new covered vehicles), 309.21(b) (for used covered vehicles).

<sup>458</sup> 42 U.S.C. 13231(a) (Supp. IV 1993); 59 FR 24014, 24019.

requirements could also benefit by possibly reducing their compliance costs. However, disturbing labeling formats with which consumers are familiar could create confusion. Attempting to fit additional disclosures into existing labels also raises the possibility that the label will overload consumers with excessive amounts of information. Accordingly, the Commission concludes that consolidating the information proposed to be disclosed with other labels providing information to consumers is not appropriate at the present time.

#### 5. Effective Date

In the NPR the Commission proposed that its AFV labeling requirements be effective ninety days after publication of a final rule in the Federal Register, and sought comment on that proposed effective date.<sup>473</sup> Five commenters addressed this issue.<sup>474</sup> CEC stated that the Commission's proposal allowed sufficient time for implementation.<sup>475</sup> Flexible and Thomas BB expressed concern about supporting the proposed effective date before the Commission had announced the content of its AFV labeling requirements in more detail.<sup>476</sup>

AAMA and NPGA opposed the proposed effective date because, "[b]ased on past experience with new label requirements," affected industries would need a period greater than ninety days to design, order, receive, and install required labels on affected vehicles.<sup>477</sup> As a result, ninety days did not allow adequate time for compliance.<sup>478</sup> AAMA suggested that the AFV labeling requirements be effective at least nine months after publication;<sup>479</sup> NPGA recommended six months.<sup>480</sup> AAMA also stated that requiring compliance within nine months would not "impede the label's intent" because DOE has issued its information package, the market for AFVs is small in the near term, and most AFV purchases in the near term will be made by fleet operators who "will already be well educated with respect to [AFVs] through their direct

interaction with vehicle manufacturers."<sup>481</sup>

EPA 92 does not address when the Commission's AFV labeling requirements must be effective. In developing this revised proposal the Commission has thus considered how best to balance consumers' needs for comparative information with industry's need for a reasonable period of time to come into compliance.<sup>482</sup> After considering the comments, the Commission believes that the proposed effective date (i.e., ninety days after publication in the Federal Register) is both reasonable and consistent with EPA 92's legislative program.

Comments from automobile manufacturers indicated that industries affected by the AFV labeling requirements would require far greater than ninety days to comply with the final rule. As a result, the Commission has considered the extent to which a ninety-day effective date would cause an unreasonable hardship to the industries affected by the proposed rule. The Commission notes that for used covered AFVs, its proposal requires disclosure of standard information in a uniform format.<sup>483</sup> Implementation of that requirement would thus simply require obtaining copies of the required label format and arranging for posting in affected vehicles. Because the Commission does not believe that the market for used vehicles powered by alternative fuels is extensive at this time, it is also not likely that this requirement will presently affect a significant number of used vehicle dealers.

For new covered AFVs, the Commission's revised proposal would require disclosure of a combination of information: standard information pertinent to all AFVs in general and objective information particular to each AFV. For these vehicles the Commission notes that the objective information required to be disclosed should either be available or readily ascertainable. For example, the vehicles must be certified as meeting an EPA certification standard, so AFV manufacturers will have ready access to that information. The Commission also notes that recently-issued EPA regulations regarding AFV fuel-economy labeling

were effective no later than sixty days after publication in the Federal Register.<sup>484</sup>

The Commission believes that consumers will need comparative information shortly after the final rule's publication date in mid-1995, because EPA 92's fleet acquisition mandates begin with fiscal year 1996 for the federal fleet<sup>485</sup> and model year 1996 for alternative fuel providers.<sup>486</sup> Accordingly, after considering the record, the Commission proposes that its AFV labeling requirements be effective ninety days after publication in the Federal Register.

#### 6. Updating AFV Labeling Requirements

As noted previously, EPA 92 directs the Commission to update its labeling requirements "periodically" (a duration not otherwise defined in the statute) "to reflect the most recent available information."<sup>487</sup> This requirement contrasts with EPA 92's direction to DOE to update its consumer information package "annually."<sup>488</sup> Given the irregular pace of such technological development and regulatory activity, the Commission believes that a flexible approach will best meet consumers' needs. For example, although the Commission understands that EPA will promulgate rules that require fuel economy labeling for vehicles powered by LPG, hydrogen, electricity and other alternative fuels,<sup>489</sup> the Commission cannot predict when those standards will be adopted. The Commission therefore intends to keep apprised of pertinent technological advances, monitor the extent to which other governmental agencies impose labeling requirements, and then update its AFV labeling requirements as appropriate.

#### IV. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires agencies to prepare a regulatory flexibility analysis when

<sup>484</sup> 59 FR 39638, 39638, Aug. 3, 1994 (fuel economy test procedures and labeling requirements). Other pertinent EPA regulations have similar (or shorter) effective dates. See, e.g., Fleet Standards Rule, 59 FR 50042, 50042, Sept. 30, 1994 (rule effective no later than 60 days after publication); Gaseous Fuels Rule, 59 FR 48472, 48472, Sept. 21, 1994 (rule effective no later than 60 days after publication); Clean Fuel Fleet Program: Definitions and General Provisions, 58 FR 64679, 64679, Dec. 9, 1993 (rule effective 30 days after publication); Clean Fuel Fleet Program: Transportation Control Measure Exemptions, and Related Provisions, 58 FR 11888, 11888, March 1, 1993 (rule effective two days after publication).

<sup>485</sup> 42 U.S.C. 13212 (Supp. IV 1993).

<sup>486</sup> 42 U.S.C. 13251 (Supp. IV 1993). Acquisition requirements for private fleet operators begin in model year 1999. 42 U.S.C. 13257 (Supp. IV 1993).

<sup>487</sup> 42 U.S.C. 13232(a) (Supp. IV 1993).

<sup>488</sup> 42 U.S.C. 13231 (Supp. IV 1993).

<sup>489</sup> 59 FR 39638, 39639.

<sup>473</sup> 59 FR 24014, 24017, 24022.

<sup>474</sup> Two other commenters (AGA/NGVC and API) stated that this issue could best be addressed by AFV manufacturers and aftermarket converters. AGA/NGVC, G-6, 12; API, G-25, 8.

<sup>475</sup> CEC, H-8, 12.

<sup>476</sup> Flexible, G-12, 2; Thomas BB, G-10, 2.

<sup>477</sup> AAMA, G-7, 3; see also NPGA, G-18, 6 (same). AAMA's comments on that point were supported by Chrysler, Ford, and GM. Chrysler, G-13, 1; Ford, G-14, 1; GM, G-3, 1.

<sup>478</sup> AAMA, G-7, 3; NPGA, G-18, 6.

<sup>479</sup> Id.

<sup>480</sup> NPGA, G-18, 6.

<sup>481</sup> AAMA, G-7, 3.

<sup>482</sup> As noted, EPA 92 requires the Commission to consider "the problems associated with developing and publishing useful and timely cost and benefit information, taking into account lead time, costs, the frequency of changes in costs and benefits that may occur, and other relevant factors." 42 U.S.C. 13232(a) (Supp. IV 1993).

<sup>483</sup> See proposed rule § 309.203(e) (content of labels for used covered vehicles).

publishing a proposed rule unless the proposed rule, if promulgated, would not have a "significant economic impact on a substantial number of small entities."<sup>490</sup> In the NPR, the Commission stated that the economic impact of the proposed requirements appeared to be *de minimis*. At that time, the Commission proposed no recordkeeping requirements, and the proposed disclosures consisted of information that was basic and easily ascertainable. The Commission tentatively concluded in the NPR that the proposed rule also would not affect a substantial number of small entities because information the Commission possessed indicated that relatively few companies currently sell alternative fuels or manufacture, convert, or sell AFVs. Of those that manufacture or sell AFVs, most are not "small entities" as that term is defined either in section 601 of RFA<sup>491</sup> or applicable regulations of the Small Business Administration.<sup>492</sup>

In light of these factors, the Commission certified in the NPR that the labeling requirements in the proposed rule would not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, that a regulatory analysis was not necessary. To ensure the accuracy of its certification, the Commission requested comment on whether the proposed rule would have a significant impact on a substantial number of small entities. The Commission received no comments in response to the NPR concerning its analysis under RFA.

The labeling disclosure requirements the Commission now proposes do not impose significant additional requirements over those proposed in the NPR. The Commission now proposes, however, requiring that producers and distributors of non-liquid alternative fuels (other than electricity), retailers of non-liquid alternative fuels (including electricity), and manufacturers of electric vehicle charging system equipment and electrical energy dispensing systems for electric vehicles maintain records to substantiate certain product-specific disclosures that must be included on labels. In addition, the Commission now also proposes requiring that AFV manufacturers maintain records to substantiate the two product-specific disclosures that must be included on labels.

Despite these additional proposed requirements, the Commission has preliminarily concluded that the

proposed rule, if enacted, would have a minimal effect on all business entities within the affected industries, regardless of their size. Available information suggests that approximately 1,000 companies import, produce, refine, distribute, or retail CNG to consumers. Further, only approximately 50 companies manufacture or distribute electric vehicle fuel dispensing systems, and no more than 250 retail companies sell electricity to consumers through such systems for the purpose of recharging electric vehicle batteries. Except for those companies that sell non-liquid alternative fuel (including electricity) to consumers, the Commission believes most of these industry members are not "small entities" as that term is defined in section 601 of the Regulatory Flexibility Act and in the regulations of the Small Business Administration, found in 13 CFR Part 121 (1994).

Although there may be some "small entities" among retail sellers of non-liquid alternative fuels (including electricity), the labeling rules proposed today would likely have only a minimal impact on these small entities. Any such impact would likely consist of minimal additional recordkeeping and of retailers merely placing labels on fuel dispensers (to the extent this is not done by distributors for their retailer customers). The impact on small entities, therefore, appears to be *de minimis* and not significant.

In light of these factors, the Commission certifies under RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities. Therefore, a regulatory analysis is not necessary.<sup>493</sup> To ensure the accuracy of this certification, however, the Commission requests comment in section VIII.B, below, on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities in each category that would be covered by the proposed rule, the number of these companies that are "small entities," and the average annual burden for each entity. After reviewing any comments received on this subject, the Commission will decide whether the

preparation of a final regulatory flexibility analysis is appropriate.

## V. Regulatory Review

The Commission has implemented a program to review all of its current and proposed rules and guides. One purpose of the review is to minimize the economic impact of new regulatory actions. As part of that overall regulatory review, the Commission solicited comments in the NPR on questions concerning benefits and significant burdens and costs of the proposed rule and alternatives to the proposals that would increase benefits to purchasers and minimize the costs and other burdens to firms subject to the rule's requirements. Only NACAA's comment raised an issue not previously covered in other parts of this notice.

Specifically, NACAA stated that it believes federal labeling requirements for alternative fuels and alternative fueled vehicles are essential because many jurisdictions have no provisions to cover engine fuels. It urged, however, that the Commission's regulations in no way preclude localities, as needed, from creating more stringent labeling requirements for alternative fuels. NACAA stated that it believes the Commission's proposed labeling requirements would not create undue burdens on consumers or industry.<sup>494</sup>

The preemption standard in the proposed rule is the same as the standard used in other Commission rules, i.e., the rule supersedes only state and local laws and regulations that are inconsistent with, or would frustrate the purposes of, the requirements of the rule.<sup>495</sup> Under this standard, state or local laws or regulations that create more stringent labeling requirements for alternative fuels would not be preempted unless those laws or regulations would frustrate the purposes of the Commission's rule. In addition, a State or local government could petition the Commission, for good cause, to permit the enforcement of any part of a

<sup>490</sup> NACAA, H-6, 2.

<sup>491</sup> See § 309.104 of the text of the proposed labeling rule in section XI, below. This preemption standard is different than the standard in the Fuel Rating Rule. Under § 306.4 of the Fuel Rating Rule, "no State or any political subdivision thereof may adopt or continue in effect, except as provided in subsection (b), any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title." 16 CFR 306.4 (1994). The preemption provision in the Fuel Rating Rule is specified by Section 204 of the Petroleum Marketing Practices Act, 15 U.S.C. 2824. There is no similar provision that applies to this proposed rule.

<sup>492</sup> 5 U.S.C. 603(a), 605(b).

<sup>493</sup> 5 U.S.C. 601(6).

<sup>494</sup> 13 CFR Part 121 (1994).

<sup>495</sup> This analysis and conclusion is consistent with Commission's analysis and conclusion in its Statement of Basis and Purpose ("SBP") for the liquid alternative fuels amendments to the Fuel Rating Rule. In that SBP, the Commission certified that the Fuel Rating Rule's similar requirements would not have a significant impact. 58 FR 41356, 41369-41370.

State or local law or regulations that would be preempted by the rule.

API encouraged the Commission to review the rule, particularly after private, voluntary consensus standards organizations develop fuel specifications for alternative fuels. API also encouraged the Commission to consider reviewing the rule as new alternative fuels enter the marketplace.<sup>496</sup>

The Commission intends to conduct reviews as necessary to take into consideration relevant developments.<sup>497</sup> Section 406 of EPA 92 requires the Commission to update the rule periodically to reflect the most recently available information, and the Commission's ongoing regulatory review process schedules all rules and guides for review at least once every ten-year period.

## VI. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA")<sup>498</sup> and regulations of the Office of Management and Budget ("OMB")<sup>499</sup> implementing the PRA, require agencies to obtain clearance for regulations that involve the "collection of information," which includes both reporting and recordkeeping requirements. Because the rule the Commission proposed in the NPR contained disclosure requirements only, the Commission concluded there was no proposed "information collection" to submit to OMB for clearance. To ensure the accuracy of its conclusion, however, the Commission solicited comments in the NPR on any paperwork burden that the public believed the proposed requirements might impose. The Commission received no comments in response to the NPR concerning this conclusion or any paperwork burden the proposed rule might have imposed.

Consistent with the Fuel Rating Rule's requirements for sellers of liquid alternative fuels, however, the Commission now proposes requiring that producers, importers, refiners, and distributors of non-liquid alternative fuels (other than electricity), retailers of non-liquid alternative fuels (including electricity), and manufacturers and distributors of electric vehicle fuel dispenser systems maintain records to substantiate the product-specific disclosures that would be required on fuel dispenser labels. In addition, the Commission now proposes requiring that AFV manufacturers maintain records to substantiate two product-

specific disclosures that would be required on AFV labels.

The proposed recordkeeping requirements are "collections of information" as defined by 5 CFR 1320.7(c) (1994), the OMB regulations implementing PRA. They therefore will be submitted to OMB for review under the PRA before the Commission issues the final rule. The Commission believes, however, that the proposed recordkeeping requirements, if enacted, would impose a minimal annual "collection of information" burden on each covered party within the affected industries.

The Commission also expects that certifications for non-liquid alternative fuels (other than electricity) will be noted on documents (shipping receipts, etc.) already in use, or will be accomplished with a one-time letter of certification, consistent with current procedures for gasoline and liquid alternative fuel suppliers covered by the Fuel Rating Rule. Producers, importers, refiners, and distributors of non-liquid alternative fuels (other than electricity), and retailers of non-liquid alternative fuels (including electricity) need merely file and retain these certifications as the required recordkeeping.

The Commission expects that manufacturers of electric vehicle fuel dispenser systems will permanently mark the required disclosures on the equipment or systems, or will note that information on documents (shipping receipts, etc.) already in use. Manufacturers need merely file and retain records demonstrating substantiation for the proposed labeling disclosures. Distributors and retailers need merely file the documents provided to them by the manufacturers or distributors. If the systems are permanently marked by the manufacturers, distributors and retailers may rely on the permanent markings as the required recordkeeping.

In the liquid alternative fuel amendments to the Fuel Rating Rule, the Commission estimated that the information collection burden associated with that rule's recordkeeping requirements was six minutes per year per industry member.<sup>500</sup> This estimate was small because the records at issue were likely to be retained by the industry during the normal course of business, and the "burden," for OMB purposes, is defined to exclude effort that would be expended in any event.<sup>501</sup> The

Commission believes that the same burden per covered industry member is appropriate for the proposed recordkeeping requirements in this rulemaking proceeding.

The Commission also proposes requiring that AFV manufacturers maintain records to substantiate the tailpipe emission standard to which the vehicle has been certified by EPA and their estimates of each vehicle's cruising range. Pursuant to the proposed rule, manufacturers would calculate cruising range values in one of three ways. For vehicles required to comply with EPA's fuel-economy labeling provisions, cruising range would be calculated using the vehicle's estimated fuel-economy rating.<sup>502</sup> For electric vehicles, cruising range must be calculated in accordance with the Society of Automotive Engineers' "Recommended Practice," J1634. For other vehicles not yet required to be labeled with EPA's fuel economy stickers, the Commission proposes that manufacturers possess a reasonable basis, consisting of competent and reliable evidence, for the cruising range values disclosed. Also under the Commission's proposed rule, AFV labels for new covered vehicles would contain a graphic depicting the exhaust emission standard to which the vehicle has been certified pursuant to applicable EPA regulations.<sup>503</sup> The Commission estimates that the information collection burden associated with the proposed recordkeeping requirements for AFV manufacturers would be thirty minutes per year per manufacturer.

The Commission estimates that approximately 1,300 industry members would be covered by the recordkeeping requirements that apply to the proposed rule's fuel labeling disclosures. Of these, the Commission estimates that approximately 1,000 industry members import, produce, refine, distribute or retail CNG to the public for use in AFVs. The Commission estimates that approximately 50 industry members manufacture or distribute electric vehicle fuel dispensing systems and that no more than 250 companies retail electricity to the public through electric vehicle fuel dispensing systems. The Commission estimates that currently few, if any, industry members sell

<sup>496</sup> The time and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (e.g., in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting or recordkeeping activities needed to comply are usual and customary."

<sup>502</sup> 40 CFR Part 600 (1993).

<sup>503</sup> 40 CFR Parts 86 and 88 (1993).

<sup>490</sup> API, G-25, 9.

<sup>497</sup> See *supra* sections III(B)(5)(d) and III(C)(6).

<sup>498</sup> 44 U.S.C. 3501-3520.

<sup>499</sup> 5 CFR 1320.7(c).

<sup>500</sup> 58 FR 41356, 41370-41371.

<sup>501</sup> Section 1320.7(b)(1) of the regulations implementing the Paperwork Reduction Act, 5 CFR 1320.7(b)(1) (1994), states:

hydrogen to consumers for use in AFVs. Based on these figures, the Commission estimates that the total yearly burden information collection burden of the proposed rule on these industry members would be 130 hours (six minutes per year times 1,300 industry members).

Although under the proposed rule manufacturers would be required to determine cruising ranges and emission standards for different models of vehicles, the burden estimate is small because the records at issue are likely to be developed and retained by the industry during the normal course of business. The Commission estimates that approximately 58 industry members would be covered by the proposed rule's cruising range and emission standard recordkeeping requirements. This is based on similar estimates EPA made in connection with its emission standards recordkeeping requirements contained in a final rule establishing two clean-fuel vehicle programs. The information collection requirements in EPA's rule were submitted to OMB by EPA and discussed in ICR No. 1694.<sup>504</sup> Based on these figures, the Commission estimates that the current total yearly burden of the proposed rule on the 58 industry members would be 29 hours (thirty minutes per year times 58 industry members).

Consequently, the Commission estimates that the total burden associated with complying with the Rule's recordkeeping requirements for AFVs and non-liquid alternative fuels (including electricity), as proposed, would be a total of approximately 159 hours per year for all affected industry members. To ensure the accuracy of these burden estimates, however, the Commission solicits comment on the paperwork burden that the proposed requirements may impose to ensure that no additional burden has been overlooked.

## VII. Metric Usage

The metric measurement system is the preferred system of weights and measures for United States trade and commerce.<sup>505</sup> Federal law requires federal agencies to use the metric measurement system in all

procurements, grants and other business-related activities (including rulemakings), except to the extent that such use is impractical or likely to cause significant inefficiencies or loss of markets to United States firms.<sup>506</sup> In the NPR, the Commission identified one section of the proposed rule with a potential for use of metric terms. Specifically, the Commission proposed in the NPR that AFV labels disclose fuel tank capacity in gallons. The Commission sought comment on whether to require metric or dual (i.e., metric and non-metric) units for this disclosure.

Five commenters addressed the issue of whether the Commission should require disclosures of metric measurements. CEC encouraged the use of dual disclosures (i.e., in both "inch-pound" and metric measurements).<sup>507</sup> RFA stated that volumes of liquid alternative fuels should be expressed in terms of gallons at the present time since that is the volume measurement most familiar to U.S. consumers, but that it did not believe there would be any drawbacks to dual units of measurement, i.e., both gallons and liters.<sup>508</sup> AGA/NGVC opposed requiring metric disclosures.<sup>509</sup> API stated that, although public awareness of metric units is not high at this time, a dual fuel tank labeling requirement for fuel tank capacity would accommodate the provisions of the Federal Metric Conversion Act.<sup>510</sup> NPGA stated that it recognizes and supports the overall, long term goal of the Congress to change the domestic economy to metric units. However, with respect to AFVs, NPGA believes consumer labels should disclose fuel tank capacity in US gallons for the time being, with metric units required for all vehicles on a uniform basis at some time in the future.<sup>511</sup>

The Commission has decided not to propose that AFV labels disclose fuel tank capacity in gallons. However, the Commission now proposes to require that AFV labels disclose cruising range, i.e., miles on one tank or charge.<sup>512</sup>

<sup>506</sup> *Id.*

<sup>507</sup> CED, H-8, 12.

<sup>508</sup> FRA, G-5, 6.

<sup>509</sup> AGA/NGVC, G-6, 10-11.

<sup>510</sup> API, G-25, 9.

<sup>511</sup> NPGA, G-18, 5 (makes little sense to allow conventionally fueled vehicles to continue use of non-metric units for fuel tank capacity but require the use of metric units on alternative fueled vehicles which collectively comprise only a small fraction of the total number of such vehicles in service and use). Likewise, NPGA believes that a requirement for dual units (metric and non-metric) should be deferred until such notation is required of all covered vehicles. *Id.* at 5.

<sup>512</sup> See §§ 309.20 and 309.22 of the text of the proposed rule in section XI *infra*.

Given the limited size of the proposed AFV label and the amount of information it would contain, the Commission does not believe that it would be practical to include metric equivalents. The Commission, therefore, does not propose requiring disclosure of cruising range in metric (i.e., kilometers) as well as inch-pound measurements (i.e., miles).

## VIII. Invitation to Comment

The Commission invites interested persons to address any questions of fact, law, or policy that they believe may bear upon the proposed rule. The Commission particularly desires comment, however, on the questions listed below.

Before adopting a final rule, consideration will be given to any written comments timely submitted to the Commission. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act<sup>513</sup> and the Commission's Rule of Practice,<sup>514</sup> during normal business days from 8:30 a.m. to 5 p.m., at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC 20580.

### A. Proposed Labeling Rule

#### 1. Alternative Fuel Labeling

(a) Should the Commission issue its proposal for labeling of non-liquid alternative fuels as a final rule? If yes, why; if no, why not?

(b) What are the advantages of the Commission's proposal?

(c) What costs or problems are associated with the Commission's proposal? How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(d) Would any disclosures specified by existing law (either federal, state, or local) affect the Commission's alternative fuels labeling proposal?

(e) Should the Commission require any additional or alternative disclosures, or variations on the proposed disclosures?

(1) If yes: (a) Why? (b) What should be disclosed? (c) Are there any adequate, generally accepted standards upon which to base those disclosures? (d) What are those standards? (e) What costs or problems are associated with this option? (f) How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

<sup>504</sup> Fleet Standards Rule, 59 FR 50042, 50072, Sept. 30, 1994. Under EPA's Clean Fuel Fleet Program, a percentage of new vehicles acquired by certain fleet owners located in covered areas will be required to meet clean-fuel fleet vehicle emission standards. The California Pilot Test Program requires manufacturers to sell light-duty clean-fuel vehicles in California.

<sup>505</sup> 15 U.S.C. 205b. See also Exec. Order No. 12,770, 56 FR 35801, July 21, 1991 (implementing section 205b).

<sup>513</sup> 5 U.S.C. 552.

<sup>514</sup> 16 CFR 4.11 (1994).

(f) Should the Commission require disclosure of the principal component of the non-liquid alternative fuels CNG and hydrogen and permit disclosure of other components, expressed as minimum molecular percentages?

(1) If yes: (a) Why? (b) What are the benefits of such a requirement? (c) How should information about those components be calculated and displayed? (d) What costs or problems are associated with requiring such a disclosure? (e) How might the Commission minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

(g) Should the Commission require any additional or alternative disclosures, or variations on the proposed disclosures?

(1) If yes: (a) Why? (b) What should be disclosed? (c) Are there any adequate, generally accepted standards upon which to base those disclosures? (d) What are those standards? (e) What costs or problems are associated with this option? (f) How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

(h) Should the Commission require disclosure of the type of fuel (i.e., electricity), kilowatt capacity, the voltage at which electrical power is supplied, the type of current supplied (either AC or DC), the maximum current in amperes that can be delivered, and whether the dispenser is conductive or inductive on labels on electrical dispensers and electric charging equipment used to recharge EV batteries?

(1) If yes: (a) Why? (b) What are the benefits of such a requirement? (c) How should those operating parameters be described and defined? (d) How should information about those parameters be calculated and displayed? (e) What costs or problems are associated with requiring such a disclosure? (f) How might the Commission minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

(i) Should the Commission require any additional, fewer or alternative disclosures, or variations on the proposed disclosures?

(1) If yes: (a) Why? (b) What should be disclosed? (c) Are there any adequate, generally accepted standards upon which to base those disclosures? (d) What are those standards? (e) What costs or problems are associated with this option? (f) How might the Commission modify its proposal to

minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

(j) Should the Commission require the same size and format in its labeling for non-liquid alternative fuels as required by the Fuel Rating Rule for liquid alternative fuels?

(1) If yes, why?

(2) If no, why not?

(k) Should the Commission require use of specific ASTM or other test procedures to substantiate disclosure of the minimum percentage of methane in CNG and of hydrogen in hydrogen gas, and of any other components in CNG or hydrogen that sellers wish to disclose?

(1) If yes, should the Commission require use of ASTM D 1945-91, "Standard Test Method for Analysis of Natural Gas by Gas Chromatography," to substantiate the disclosure of the minimum percentage of methane in CNG? Why? Should the Commission require use of ASTM D 1946-90, "Standard Practice for Analysis of Reformulated Gas by Gas Chromatography," to substantiate the disclosure of the minimum percentage of hydrogen in hydrogen gas? Why?

(2) If yes, should the Commission require use of other test procedures to substantiate these disclosures? If so, what test procedures? Why?

(3) If no, why not?

(l) Does the proposed effective date allow affected interests sufficient time to comply with the proposed requirements?

(1) If yes, why?

(2) If no: (a) Why not? (b) How much extra time would be necessary to comply with the proposed labeling requirements for the non-liquid alternative fuels? Why is that extra time necessary?

2. AFV Labeling

(a) Should the Commission issue its revised proposal for AFV labeling as a final rule? If yes, why; if no, why not?

(b) What are the advantages of the Commission's proposal?

(c) What costs or problems are associated with the Commission's proposal? How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(d) Would any disclosure specified by existing law (either federal, state, or local) affect the Commission's AFV labeling proposal?

(e) Are the Commission's proposed definitions of "covered vehicle" and "new covered vehicle" appropriate and feasible?

(1) If yes, why?

(2) If no: (a) Why not? (b) How should the definitions be modified to reflect

more accurately section 406(a)'s mandate and purpose?

(f) Are the Commission's proposed definitions of "manufacturer" and "aftermarket conversion system" appropriate and feasible?

(1) If yes, why?

(2) If no: (a) Why not? (b) How should the definitions be modified to reflect more accurately section 406(a)'s mandate and purpose?

(g) Are the Commission's proposed definitions of "acquisition," "person," and "consumer" appropriate and feasible?

(1) If yes, why?

(2) If no: (a) Why not? (b) How should the definitions be modified to reflect more accurately section 406(a)'s mandate and purpose?

(h) Are the Commission's proposed definitions of "used covered vehicle" and "used vehicle dealer" appropriate and feasible?

(1) If yes, why?

(2) If no: (a) Why not? (b) How should the definitions be modified to reflect more accurately section 406(a)'s mandate and purpose?

(i) Is cruising range a useful measure for consumer comparisons?

(1) If yes, why? If no, why not?

(j) What costs or problems are associated with displaying cruising range values in the proposed labeling formats? How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(k) Is the emission standard to which a vehicle has been certified a useful measure for consumer comparisons?

(1) If yes, why? If no, why not?

(l) What costs or problems are associated with displaying emission standards in the proposed labeling format? How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(m) Should a list of issues relevant to AFVs in general be included on AFV labels, as proposed in the SNPR?

(1) If yes, why? If no, why not?

(n) Should AFV labels notify consumers of the availability of DOE's consumer information brochure and DOT/NHTSA's Auto Safety Hotline, as proposed in the SNPR?

(1) If yes, why? If no, why not?

(o) Should the Commission require any additional or alternative disclosures, or variations on the proposed disclosures?

(1) If yes: (a) Why? (b) What should be disclosed? (c) Are there any adequate, generally accepted standards upon which to base those standards? (d) What are those standards? (e) What

costs or problems are associated with this option? (f) How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(2) If no, why not?

(p) What costs or problems, if any, are associated with the size and format proposed for the new vehicle labels? How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(q) What costs or problems, if any, are associated with the size and format proposed for the used vehicle labels? How might the Commission modify its proposal to minimize any such costs or problems, while maintaining the benefits?

(r) Should any of the information proposed to be disclosed in this SNPR be consolidated into existing labels providing information to consumers?

(1) If yes: (a) Why? (b) Which labels? (c) How might this information be displayed to prevent information overload?

(2) If no, why?

(s) Should any information required to be displayed on existing labels be consolidated into the Commission's AFV labels?

(1) If yes: (a) Why? (b) Which information? (c) How might this information be displayed to prevent information overload?

(t) Does the proposed effective date allow affected interests sufficient time to comply with the proposed requirements?

(1) If yes, why?

(2) If no: (a) Why not? (b) How much extra time would be necessary to comply with the proposed requirements? (c) Why is that extra time necessary?

(u) Does the Commission's proposal to update its AFV labeling requirements as appropriate, instead of on a fixed schedule, pose any problems to consumers or affected interests?

(1) If yes, why? If no, why not?

#### B. Regulatory Flexibility Act

In light of the factors explained in section IV, above, the Commission certifies under the RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities. The Commission requests that comments include specific information on the number of entities in each

category that would be covered by the proposed rule, the number of these companies that are "small entities," and the average annual burden for each entity. After reviewing any comments received on this subject, the Commission will decide whether the preparation of a final regulatory flexibility analysis is appropriate.

#### C. Regulatory Review

As explained in section V, above, the Commission has implemented a program to review all of its current and proposed rules and guides. One purpose of the review is to minimize the economic impact of new regulatory actions. As part of that overall regulatory review, the Commission solicits comments on the following questions:

1. What benefits would the proposed rule provide to purchasers of non-liquid alternative fuels? Would the proposed rule impose costs on purchasers?

2. What changes, if any, should be made to the proposed rule to increase its benefits to purchasers? How would these changes affect the costs the proposed rule would impose on firms subject to its requirements?

3. What significant burdens or costs, including costs of compliance, would the proposed rule impose on firms subject to its requirements? Would the proposed rule provide benefits to such firms?

4. What changes, if any, should be made to the proposed rule to reduce the burdens or costs imposed on firms subject to its requirements? How would these changes affect the benefits provided by the proposed rule?

5. Would the proposed rule overlap or conflict with other federal, state, or local laws or regulations?

6. What significant burdens or costs, including costs of compliance, would the proposed rule impose on small firms subject to its requirements? How would these burdens or costs differ from those imposed on larger firms that would be subject to the proposed rule's requirements?

7. To what extent would the burdens or costs that the proposed rule would impose on small firms be similar to those that small firms would incur under standard and prudent business practices?

8. What changes, if any, should be made to the proposed rule to reduce the burdens or costs imposed on small firms?

a. How would these changes affect the benefits of the proposed rule?

b. Would such changes adversely affect the competitive position of larger firms?

The Commission is also requesting comments about the overall costs and benefits of the proposed rule and its overall regulatory and economic impact as a part of its systematic review of all current and proposed Commission regulations and guides.

#### D. Paperwork Reduction Act

As described in section VI, above, the proposed rule would involve the "collection of information," as that term is defined in the Paperwork Reduction Act ("PRA")<sup>515</sup> and regulations of the Office of Management and Budget ("OMB")<sup>516</sup> implementing the PRA. "Collection of information" includes both reporting and recordkeeping requirements. The Commission does not propose requiring that any reports be submitted to the Commission. However, the Commission proposes requiring that importers, producers, refiners, and distributors of non-liquid alternative fuels (other than electricity), retailers of non-liquid alternative fuels (including electricity), and manufacturers and distributors of electric vehicle fuel dispenser systems maintain records to substantiate certain product-specific disclosures that would be required on fuel dispenser labels. In addition, the Commission proposes requiring that AFV manufacturers maintain records to substantiate the two product-specific disclosures that would be required on AFV labels.

The proposed recordkeeping requirements are "collections of information" as defined by 5 CFR 1320.7(c) (1994), the OMB regulations implementing PRA. The Commission believes that the proposed recordkeeping requirements, if enacted, would impose a minimal annual "collection of information" burden on each covered party within the affected industries. The Commission believes that the proposed recordkeeping requirements would impose a burden of only six minutes per year for each importer, producer, refiner, or distributor of non-liquid alternative fuels (other than electricity), for each retail seller of non-liquid alternative fuels (including electricity), and for each manufacturer and distributor of electric vehicle fuel dispensing systems. The Commission believes that the proposed recordkeeping requirements would impose a burden of no more than 30 minutes per year for each AFV manufacturer.

To ensure the accuracy of these estimates, the Commission is seeking public comment on the paperwork burden that the proposed rule may impose to ensure that no additional burden has been overlooked. In addition to comment on the burden per covered party per year, the Commission solicits comment on the number of importers, producers, refiners, and distributors of

<sup>515</sup> 44 U.S.C. 3501-3520.

<sup>516</sup> 5 CFR 1320.7(c).

non-liquid alternative fuels (other than electricity), of retail sellers of non-liquid alternative fuels (including electricity), and of manufacturers and distributors of electric vehicle fuel dispensing systems who would be covered by the proposed rule. Further, the Commission solicits comment on the number of AFV manufacturers who would be covered by the proposed rule.

#### E. Metric Usage

As explained in section VII, above, federal law requires federal agencies to use the metric measurement system in all procurements, grants and other business-related activities (including rulemakings), except to the extent that such use is impractical or likely to cause significant inefficiencies or loss of markets to United States firms. The Commission now proposes to require that AFV labels disclose cruising range, i.e., miles on one tank or charge. Given the limited size of the proposed AFV label and the amount of information it would contain, the Commission does not propose requiring disclosure of cruising range in metric (i.e., kilometers) as well as inch-pound measurements (i.e., miles). However, the Commission seeks comment on whether to require metric or dual (i.e., metric and non-metric) units for this disclosure.

#### IX. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission. Such motions or petitions will be transmitted to a Presiding Officer. The Presiding Officer will be responsible for the orderly conduct of the proceeding and shall have all powers necessary to that end, including the authority to rule on all motions or petitions.

Applications for review of rulings by a Presiding Officer will not be entertained by the Commission prior to its review of the entire record in the rulemaking proceeding, unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy.

#### X. Communications by Outside Parties or Their Advisors

Pursuant to Commission Rule of Practice 1.26(b)(5),<sup>517</sup> communications

with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor during the course of this rulemaking shall be subject to the following treatment: Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and promptly placed on the public record, together with any written communication and summaries of any oral communications relating to such oral communications.

#### List of Subjects in 16 CFR Part 309

Alternative fuel, Alternative fueled vehicle, Energy conservation, Labeling, Reporting and recordkeeping, Trade practices.

#### XI. Supplemental Proposed Labeling Rule

Accordingly, the Commission proposes that chapter I of 16 CFR be amended by adding a new part 309 to read as follows:

#### PART 309—LABELING REQUIREMENTS FOR ALTERNATIVE FUELS AND ALTERNATIVE FUELED VEHICLES

Authority: 42 U.S.C. 13232(a).

##### Subpart A—General

##### § 309.1 Definitions.

As used in subparts B and C of this part:

(a) *Acquisition* includes either of the following: (1) Acquiring the beneficial title to a covered vehicle; or (2) Acquiring a covered vehicle for transportation purposes pursuant to a contract or similar arrangement for a period of 120 days or more.

(b) *Aftermarket conversion system* means any combination of hardware which allows a vehicle or engine to operate on a fuel other than the fuel

which the vehicle or engine was originally certified to use.

(c) *Alternative fuel* means:

- (1) Methanol, denatured ethanol, and other alcohols;
- (2) Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and/or other alcohols (or such other percentage, but not less than 70 percent, as determined by the Secretary by rule, to provide for requirements relating to cold start, safety, or vehicle functions), with gasoline or other fuels;
- (3) Natural gas;
- (4) Liquefied petroleum gas;
- (5) Hydrogen;
- (6) Coal-derived liquid fuels;
- (7) Fuels (other than alcohol) derived from biological materials;
- (8) Electricity (including electricity from solar energy);
- (9) And any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

(d) *Consumer or ultimate purchaser* in subpart B means, with respect to any non-liquid alternative vehicle fuel (including electricity), the first person who purchases such fuel for purposes other than resale. *Consumer* in subpart C means an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States.

(e) *Conventional fuel* means gasoline or diesel fuel.

(f) *Covered vehicle* means either of the following:

- (1) A dedicated or dual fueled passenger car (or passenger car derivative) capable of seating 12 passengers or less; or
- (2) A dedicated or dual fueled motor vehicle (other than a passenger car or passenger car derivative) with a gross vehicle weight rating less than 8,500 pounds which has a vehicle curb weight of less than 6,000 pounds and which has a basic vehicle frontal area of less than 45 square feet, which is:

- (i) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or
- (ii) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (iii) Available with special features enabling off-street or off-highway operation and use.

(g) *Dedicated* means designed to operate solely on alternative fuel.

(h) *Distributor* means any person who receives non-liquid alternative vehicle fuel (other than electricity) and distributes such fuel to another person other than the consumer. It also means

<sup>517</sup> 16 CFR 1.26(b)(5) (1994).

any person who receives an electric vehicle fuel dispensing system and distributes such system to a retailer.

(i) *Dual fueled* means capable of operating on alternative fuel and capable of operating on conventional fuel.

(j) *Electric charging system equipment* means equipment that includes an electric battery charger and is used for dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(k) *Electric vehicle* ("EV") means a vehicle that is powered by electricity stored in a rechargeable battery, multiple batteries, or battery pack.

(l) *Electric vehicle fuel dispensing system* means electric charging system equipment or an electrical energy dispensing system.

(m) *Electrical energy dispensing system* means equipment that does not include an electric charger and is used for dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle that contains an on-board electric battery charger.

(n) *Emission certification standard* means the emission standard to which a covered vehicle has been certified pursuant to 40 CFR parts 86 and 88.

(o) *Estimated cruising range* means a manufacturer's reasonable estimate of the number of miles a new covered vehicle will travel between refueling or recharging, expressed as a lower estimate (i.e., minimum estimated cruising range) and an upper estimate (i.e., maximum estimated cruising range), as determined by § 309.22.

(p) *Fuel dispenser* means:

(1) For non-liquid alternative vehicle fuels (other than electricity), the dispenser through which a retailer sells the fuel to consumers.

(2) For electric vehicle fuel dispensing systems, the dispenser through which a retailer dispenses electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(q) *Fuel rating* means:

(1) For non-liquid alternative vehicle fuels (other than electricity), including, but not limited to, compressed natural gas and hydrogen gas, the commonly used name of the fuel with a disclosure of the amount, expressed as a minimum molecular percentage, of the principal component of the fuel. A disclosure of other components, expressed as a minimum molecular percentage, may be included, if desired.

(2) For electric vehicle fuel dispensing systems, a common identifier (such as, but not limited to, "electricity," "electric charging system," "electric charging station") with a disclosure of the system's kilowatt ("kW") capacity,

voltage, whether the voltage is alternating current ("AC") or direct current ("DC"), and whether the system is conductive or inductive.

(r) *Manufacturer* means the person who obtains a certificate of conformity that the vehicle complies with the standards and requirements of 40 CFR parts 86 and 88.

(s) *Manufacturer of an electric vehicle fuel dispensing system* means any person who manufactures or assembles an electric vehicle fuel dispensing system that is distributed specifically for use by retailers in dispensing electricity to consumers for the purpose of recharging batteries in an electric vehicle.

(t) *New covered vehicle* means a covered vehicle which has not been acquired by a consumer.

(u) *New vehicle dealer* means a person who is engaged in the sale or leasing of new covered vehicles.

(v) *New vehicle label* means a window sticker containing the information required by § 309.20(e).

(w) *Non-liquid alternative fueled vehicle* means a vehicle capable of operating on a non-liquid alternative vehicle fuel.

(x) *Non-liquid alternative vehicle fuel* means compressed natural gas ("CNG"), hydrogen gas ("hydrogen"), electricity used to recharge electric vehicle batteries, and any other non-liquid vehicle fuel the Secretary of the U.S. Department of Energy determines, by rule, is substantially not petroleum and would yield substantial energy benefits and substantial environmental benefits.

(y) *Person* means an individual, partnership, corporation, or any other business organization.

(z) *Producer* means any person who purchases component elements and combines them to produce and market non-liquid alternative vehicle fuel (other than electricity).

(aa) *Refiner* means any person engaged in the production or importation of non-liquid alternative vehicle fuel (other than electricity).

(bb) *Retailer* means any person who offers for sale, sells, or distributes non-liquid alternative vehicle fuel (including electricity) to consumers.

(cc) *Secretary* means the Secretary of the United States Department of Energy.

(dd) *Used covered vehicle* means a covered vehicle which has been acquired by a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the State and a salvage certificate issued).

(ee) *Used vehicle dealer* means a person engaged in the sale or leasing of used covered vehicles who has sold or

leased five or more used covered vehicles in the previous twelve months, but does not include a bank or financial institution, a business selling or leasing used covered vehicles to an employee of that business, or a lessor selling or leasing a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.

(ff) *Used vehicle label* means a window sticker containing the information required by § 309.21(e).

#### § 309.2 What this part does.

This part establishes labeling requirements for non-liquid alternative vehicle fuels, and for certain vehicles powered in whole or in part by alternative fuels.

#### § 309.3 Stayed or invalid portions.

If any portion of this part is stayed or held invalid, the rest of it will stay in force.

#### § 309.4 Preemption.

State and local laws and regulations that are inconsistent with, or frustrate the purposes of, the provisions of this part are preempted. However, a State or local government may petition the Commission, for good cause, to permit the enforcement of any part of a State or local law or regulation that would be preempted by this part.

#### § 309.5–309.9 [Reserved]

#### Subpart B—Labeling Requirements for Alternative Fuels

##### Duties of Importers, Producers, and Refiners of Non-Liquid Alternative Vehicle Fuels (Other Than Electricity) and of Manufacturers of Electric Vehicle Fuel Dispensing Systems

#### § 309.10 Alternative vehicle fuel rating.

(a) If you are an importer, producer, or refiner of non-liquid alternative vehicle fuel (other than electricity), you must determine the fuel rating of all non-liquid alternative vehicle fuel (other than electricity) before you transfer it. You can do that yourself or through a testing lab. To determine fuel ratings, you must possess a reasonable basis, consisting of competent and reliable evidence, for the minimum percentage of the principal component of the non-liquid alternative vehicle fuel (other than electricity) that you must disclose, and for the minimum percentages of other components that you choose to disclose. For the purposes of this section, fuel ratings for the minimum percentage of the principal component of compressed natural gas are to be determined in accordance with test methods set forth in American

Society of Testing and Materials ("ASTM") D 1945-91, "Standard Test Method for Analysis of Natural Gas by Gas Chromatography." For the purposes of this section, fuel ratings for the minimum percentage of the principal component of hydrogen gas are to be determined in accordance with test methods set forth in ASTM D 1945-90, "Standard Practice for Analysis of Reformed Gas by Gas Chromatography." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of D 1945-91 and D 1946-90 may be obtained from the American Society of Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue, NW, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(b) If you are a manufacturer of electric vehicle fuel dispensing systems, you must determine the fuel rating of the electric charge delivered by the electric vehicle fuel dispensing system before you transfer such systems. To determine the fuel rating of the electric vehicle dispensing system, you must possess a reasonable basis, consisting of competent and reliable evidence, for the following output information you must disclose: kilowatt ("kW") capacity, voltage, whether the voltage is alternating current ("AC") or direct current ("DC"), and whether the system is conductive or inductive.

#### § 309.11 Certification.

(a) For non-liquid alternative vehicle fuel (other than electricity), in each transfer you make to anyone who is not a consumer, you must certify the fuel rating of the non-liquid alternative vehicle fuel (other than electricity) consistent with your determination. You can do this in either of two ways:

(1) Include a delivery ticket or other paper with each transfer of non-liquid alternative vehicle fuel (other than electricity). It may be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof of transfer. It must contain at least these four items:

- (i) Your name;
- (ii) The name of the person to whom the non-liquid alternative vehicle fuel (other than electricity) is transferred;
- (iii) The date of the transfer;
- (iv) The fuel rating.

(2) Give the person a letter or written statement. This letter must include the date, your name, the other person's name, and the fuel rating of any non-

liquid alternative vehicle fuel (other than electricity) you will transfer to that person from the date of the letter onwards. This letter of certification will be good until you transfer non-liquid alternative vehicle fuel (other than electricity) with a lower fuel rating. When this happens, you must certify the fuel rating of the new non-liquid alternative vehicle fuel (other than electricity) either with a delivery ticket or by sending a new letter of certification.

(b) For electric vehicle fuel dispensing systems, in each transfer you make to anyone who is not a consumer, you must certify the fuel rating of the electric vehicle fuel dispensing system consistent with your determination. You can do this in either of two ways:

(1) Include a delivery ticket or other paper with each transfer of an electric vehicle fuel dispensing system. It may be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof of transfer. It must contain at least these five items:

- (i) Your name;
- (ii) The name of the person to whom the electric vehicle fuel dispensing system is transferred;
- (iii) The date of the transfer;
- (iv) The model number or other identifier of the electric vehicle fuel dispensing system; and
- (v) The fuel rating.

(2) Make the required certification by placing clearly and conspicuously on the electric vehicle fuel dispensing system a permanent legible marking or permanently attached label that discloses the manufacturer's name, the model number, serial number, or other identifier of the system, and the information required to be disclosed on the retail fuel dispenser label. Such marking or label must be located where it can be seen after installation of the system. The marking or label will be deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking. This marking or label would have to be in addition to, and not as a substitute for, the label required to be posted on the electric vehicle fuel dispensing system by the retailer.

#### § 309.12 Recordkeeping.

You must keep for one year records of how you determined fuel ratings. The records must be available for inspection by Federal Trade Commission staff members, or by people authorized by FTC.

#### Duties of Distributors of Non-Liquid Alternative Vehicle Fuels (Other Than Electricity) and of Electric Vehicle Fuel Dispensing Systems

##### § 309.13 Certification.

(a) If you are a distributor of non-liquid alternative vehicle fuel (other than electricity), you must certify the fuel rating of the fuel in each transfer you make to anyone who is not a consumer. You may certify either by using a delivery ticket or other paper with each transfer of fuel, as outlined in § 309.11(a)(1), or by using a letter of certification, as outlined in § 309.11(a)(2). When you receive non-liquid alternative vehicle fuel (other than electricity) from a common carrier, you also must receive from the common carrier a certification of the rating of the non-liquid alternative vehicle fuel (other than electricity), either on the delivery ticket or other paper or in a letter.

(b) If you are a distributor of electric vehicle fuel dispensing systems, you must certify the fuel rating of the system in each transfer you make to anyone who is not a consumer. You may certify by using a delivery ticket or other paper with each transfer, as outlined in § 309.11(b)(1), or by using the permanent marking or permanent label attached to the system by the manufacturer, as outlined in § 309.11(b)(2). When you receive electric vehicle fuel dispensing systems, you also must receive from the common carrier with each transfer a certification of the rating of the system, a delivery ticket or other paper, a letter of certification, or a permanent marking or permanent label attached to the system by the manufacturer.

(c) If you do not blend non-liquid alternative vehicle fuels (other than electricity), you must certify consistent with the fuel rating certified to you. If you blend non-liquid alternative vehicle fuel (other than electricity), you must possess a reasonable basis, consisting of competent and reliable evidence, as required by § 309.10(a), for the fuel rating that you certify for the blend.

##### § 309.14 Recordkeeping.

You must keep for one year any delivery tickets or letters of certification on which you based your fuel rating certifications for non-liquid alternative vehicle fuels (other than electricity) and for electric vehicle fuel dispensing systems, including the records listed in § 309.11. You must also keep for one year records of any fuel rating determinations you made according to § 309.13(c). The records must be available for inspection by Federal

Trade Commission staff members, or by persons authorized by FTC.

#### Duties of Retailers

##### § 309.15 Posting of non-liquid alternative vehicle fuel rating.

(a) If you are a retailer who offers for sale, sells or distributes non-liquid alternative vehicle fuel (other than electricity) to consumers, you must post the fuel rating of each non-liquid alternative vehicle fuel. If you are a retailer who offers for sale, sells or distributes electricity to consumers through an electric vehicle fuel dispensing system, you must post the fuel rating of the electric vehicle fuel dispensing system you use. You must do this by putting at least one label on the face of each electric vehicle fuel dispensing system. If you are selling two or more kinds of non-liquid alternative vehicle fuels with different fuel ratings from a single fuel dispenser, you must put separate labels for each kind of non-liquid alternative vehicle fuel on the face of the dispenser.

(b) (1) The label, or labels, must be placed conspicuously on the fuel dispenser so as to be in full view of consumers and as near as reasonably practical to the price per unit of the non-liquid alternative vehicle fuel.

(2) You may petition for an exemption from the placement requirements by writing the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the reasons that you want the exemption.

(c) If you do not blend non-liquid alternative vehicle fuels (other than electricity), you must post consistent with the fuel rating certified to you. If you blend non-liquid alternative vehicle fuel (other than electricity), you must possess a reasonable basis, consisting of competent and reliable evidence, as required by § 309.10(a), for the fuel rating that you post for the blend.

(d) (1) You must maintain and replace labels as needed to make sure consumers can easily see and read them.

(2) If the labels you have are destroyed or are unusable or unreadable for some unexpected reason, you can satisfy the law by posting a temporary label as much like the required label as possible. You must still get and post the required label without delay.

(e) The following examples of fuel rating disclosures for CNG and hydrogen are meant to serve as illustrations of compliance with this subpart, but do not limit this part's coverage to only the mentioned non-liquid alternative vehicle fuels (other than electricity):

(1) "CNG"

"Minimum XXX% Methane"

(2) "Hydrogen"

"Minimum XXX% Hydrogen"

(f) The following example of fuel rating disclosures for electric vehicle fuel dispensing systems is meant to serve as an illustration of compliance with this subpart:

"Electricity"

"kW"

"XXX vac XX amps"

"Inductive"

(g) When you receive non-liquid alternative vehicle fuel (other than electricity), or an electric vehicle fuel dispensing system from a common carrier, you also must receive from the common carrier a certification of the fuel rating of fuel, as outlined in § 309.13(a) and (b), respectively.

##### § 309.16 Recordkeeping

You must keep for one year any delivery tickets, letters of certification, or other documentation, including the records listed in § 309.13, on which you based your posting of fuel ratings for non-liquid alternative vehicle fuels. You also must keep for one year records of any fuel rating determinations you made according to § 309.15(c). If you rely for your certification on a permanent marking or permanent label attached to the electric vehicle fuel dispensing system by the manufacturer, you must not remove or deface the permanent marking or label. The required records, other than the permanent marking or label on the electric charging system equipment or electrical energy dispensing system, may be kept at the retail outlet or at a reasonably close location. The records, including the permanent marking or label on each electric vehicle fuel dispensing system, must be available for inspection by Federal Trade Commission staff members or by persons authorized by FTC.

##### § 309.17 Labels

All labels must meet the following specifications:

(a) *Layout:* (1) *Non-liquid alternative vehicle fuel (other than electricity) labels with one principal component.* The label is 3" (7.62 cm) wide x 2 1/2" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the fuel name is 1/4" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 1/8" (.32 cm) from the bottom of the

black band. All type below the black band is centered horizontally, with 1/8" (.32 cm) between each line. The bottom line of type is 3/16" (.48 cm) from the bottom of the label. All type should fall no closer than 3/16" (.48 cm) from the side edges of the label. If you wish to change the dimensions of this single component label to accommodate a fuel descriptor that is longer than shown in the sample labels, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(2) *Non-liquid vehicle fuel (other than electricity) labels with two components.* The label is 3" (7.62 cm) wide x 2 1/2" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the fuel name is 1/4" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3/16" (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with 1/8" (.32 cm) between each line. The bottom line of type is 1/4" (.64 cm) from the side edges of the label. If you wish to change the dimensions of this two component label to accommodate additional fuel components, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(3) *Electric vehicle fuel dispensing system labels.* The label is 3" (7.62 cm) wide x 2 1/2" (6.35 cm) long. "Helvetica black" type is used throughout. All type is centered. The band at the top of the label contains the common identifier of the fuel. This band should measure 1" (2.54 cm) deep. Spacing of the common identifier is 1/4" (.64 cm) from the top of the label and 3/16" (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3/16" (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with 1/8" (.32 cm) between each line. The bottom line of type is 1/4" (.64 cm) from the bottom of the label. All type should fall

no closer than  $\frac{3}{16}$ " (.48 cm) from the side edges of the label.

(b) *Type size and setting: (1) Labels for non-liquid alternative vehicle fuel (other than electricity) with one principal component.* All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desktop and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point ( $\frac{1}{2}$ " (1.27 cm) cap height) "Helvetica Black," knocked out of a 1" (2.54 cm) deep band. The type for the words "MINIMUM" and the principal component is 24 pt. ( $\frac{1}{4}$ " (.64 cm) cap height). The type for percentage is 36 pt. ( $\frac{3}{8}$ " (.96 cm) cap height).

(2) *Labels for non-liquid alternative vehicle fuel (other than electricity) with two components.* All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desktop and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point ( $\frac{1}{2}$ " 1.27 cm) cap height) "Helvetica Black," knocked out of a 1" (2.54 cm) deep band. All other type is 24 pt. ( $\frac{1}{4}$ " (.64 cm) cap height).

(3) *Labels for electric vehicle fuel dispensing systems.* All type should be set in upper case (all caps) "Helvetica Black" throughout. Helvetica Black is available in a variety of computer desktop and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the common identifier is 50 point ( $\frac{1}{2}$ " 1.27 cm) cap height) "Helvetica Black," knocked out of a 1" (2.54 cm) deep band. All other type is 24 pt. ( $\frac{1}{4}$ " (.64 cm) cap height).

(c) *Colors.* Labels for all non-liquid alternative vehicle fuels (including electricity). The background color on all the labels is Orange; PMS 1495. The knock-out type within the black band is orange PMS 1495. All other type is process black. All borders are process black. All colors must be non-fade.

(d) *Contents.* Examples of the contents are shown in the sample labels. The proper fuel rating for each non-liquid alternative vehicle fuel (including electricity) must be shown. No marks or information other than that called for by this part may appear on the labels.

(e) *Special label protection.* All labels must be capable of withstanding extremes of weather conditions for a period of at least one year. They must be resistant to vehicle fuel, oil, grease, solvents, detergents, and water.

(f) *Illustrations of labels.* Labels must meet the specifications in this section and look like Figures 1 through 3, except the black print should be on the appropriately colored background.

#### §§ 309.18–309.19 [Reserved]

### Subpart C—Labeling Requirements for Alternative Fueled Vehicles

#### § 309.20 Labeling requirements for new covered vehicles.

(a) *Affixing and maintaining labels.*

(1) Before offering a new covered vehicle for acquisition to consumers, manufacturers shall affix or cause to be affixed, and new vehicle dealers shall maintain or cause to be maintained, a new vehicle label on a visible window surface of each such vehicle.

(2) If an aftermarket conversion system is installed on a vehicle by a person other than the manufacturer prior to such vehicle's being acquired by a consumer, the manufacturer shall provide that person with the vehicle's estimated cruising range (as determined by § 309.22(a) for dedicated vehicles and § 309.22(b) for dual fueled vehicles) and emission certification standard and ensure that new vehicle labels are affixed to such vehicles as required by paragraph (a) of this section.

(b) *Layout.* Figures 1 through 8 of this subpart are prototype labels that demonstrate the proper layout. All positioning, spacing, type size, and line widths shall be similar to and consistent with the prototype labels. Labels required by this section are two-sided and rectangular in shape measuring 7 inches (17.5 cm) in width and 5½ inches (13.75 cm) in height. Figure 4 represents the prototype for the front side of the labels for dedicated vehicles. Figure 5 represents the prototype of the front side of the labels for dual-fueled vehicles. Figure 6 represents the prototype of the back side of the labels for both dedicated and dual-fueled vehicles. No marks or information other than that specified in this subpart shall appear on this label.

(c) *Type size and setting.* The Helvetica Condensed and Helvetica family typefaces or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are indicated on the prototype labels (Figures 4, 5, and 6). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototypes closely.

(d) *Colors and paper stock.* All labels shall be printed in process black ink on Hammermill Offset Opaque Vellum/S.70 Sky Blue (or equivalent) paper. Follow label prototypes for percentages of screen tints in Exhaust Emissions chart.

(e) *Content.* (1) Headlines and text, as illustrated in Figures 4, 5, and 6, are standard for all labels.

(2) Estimated cruising range. (i) For dedicated vehicles, determined in accordance with § 309.22(a).

(ii) For dual fueled vehicles, determined in accordance with § 309.22(b).

(3) The vehicle's emission certification standard, indicated by placing a caret above the standard to which that vehicle has been certified.

#### § 309.21 Labeling requirements for used covered vehicles.

(a) *Affixing and maintaining labels.* Before offering a used covered vehicle for acquisition to consumers, used vehicle dealers shall affix and maintain, or cause to be affixed and maintained, a used vehicle label on a visible window surface of each such vehicle.

(b) *Layout.* Figures 1 through 8 of this subpart are prototype labels that demonstrate the proper layout. All positioning, spacing, type size, and line widths should be similar to and consistent with the prototype labels. Labels required by this section are two-sided and rectangular in shape measuring 7 inches (17.5 cm) in width and 5½ inches (13.75 cm) in height. Figure 7 represents the prototype of the front side of the labels for used covered vehicles. Figure 8 represents the back side of the labels for used covered vehicles. No marks or information other than that specified in this subpart shall appear on this label.

(c) *Type size and setting.* The Helvetica Condensed and Helvetica family typefaces or equivalent shall be used exclusively on the label. Specific type sizes and faces to be used are indicated on the prototype labels (Figures 7 and 8). No hyphenation should be used in setting headline or text copy. Positioning and spacing should follow the prototypes closely.

(d) *Colors and paper stock.* All labels shall be printed in process black ink on Hammermill Offset Opaque Vellum/S.70 Sky Blue (or equivalent) paper.

(e) *Contents.* Headlines and text, as illustrated in Figures 7 and 8, are standard for all labels.

#### § 309.22 Determining estimated cruising range

(a) *Dedicated vehicles.* (1) Estimated cruising range values for dedicated

vehicles required to comply with the provisions of 40 CFR part 600 are to be calculated in accordance with the following:

(i) The lower range value shall be determined by multiplying the vehicle's estimated city fuel economy by its fuel tank capacity, then rounding to the next lower integer value.

(ii) The upper range value shall be determined by multiplying the vehicle's estimated highway fuel economy by its fuel tank capacity, then rounding to the next higher integer value.

(2) Estimated cruising range values for dedicated vehicles powered by electricity are to be calculated in accordance with the following:

(i) The lower range value shall be determined by multiplying the vehicle's estimated city fuel economy by its battery capacity, then rounding to the next lower integer value.

(ii) The upper range value shall be determined by multiplying the vehicle's estimated highway fuel economy by its battery capacity, then rounding to the next higher integer value. For the purposes of this section, city and highway fuel economy are to be determined in accordance with test methods set forth in SAE J1634, "Electric Vehicle Energy Consumption and Range Test Procedure." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of J1634 may be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096-0001, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(3) To determine the estimated cruising range values for dedicated vehicles not required to comply with the provisions of 40 CFR part 600 (other than electric vehicles), you must possess a reasonable basis, consisting of competent and reliable evidence that substantiates the minimum and maximum number of miles the vehicle will travel between refuelings or rechargings that is claimed.

(b) *Dual-fueled vehicles.* (1) Estimated cruising range values for dual-fueled vehicles required to comply with the provisions of 40 CFR part 600 are to be calculated in accordance with the following:

(i) The lower range value for the vehicle while operating exclusively on alternative fuel shall be determined by multiplying the vehicle's estimated city fuel economy by its alternative-fuel tank capacity, then rounding to the next lower integer value.

(ii) The upper range value for the vehicle while operating exclusively on alternative fuel shall be determined by multiplying the vehicle's estimated highway fuel economy by its alternative-fuel tank capacity, then rounding to the next higher integer value.

(iii) The lower range value for the vehicle while operating exclusively on conventional fuel shall be determined by multiplying the vehicle's estimated city fuel economy by its conventional-fuel tank capacity, then rounding to the next lower integer value.

(iv) The upper range value for the vehicle while operating exclusively on conventional fuel shall be determined by multiplying the vehicle's estimated highway fuel economy by its conventional-fuel tank capacity, then rounding to the next higher integer value.

(2) Estimated cruising range values for dual-fueled vehicles capable of operating on electricity are to be calculated in accordance with the following:

(i) The lower range value while operating exclusively on electricity shall be determined by multiplying the vehicle's estimated city fuel economy by its battery capacity, then rounding to the next lower integer value.

(ii) The upper range value while operating exclusively on electricity shall be determined by multiplying the vehicle's estimated highway fuel economy by its battery capacity, then rounding to the next higher integer value.

(iii) The lower range value for the vehicle while operating exclusively on conventional fuel shall be determined by multiplying the vehicle's estimated city fuel economy by its fuel tank

capacity, then rounding to the next lower integer value.

(iv) The upper range value for the vehicle while operating exclusively on conventional fuel shall be determined by multiplying the vehicle's estimated highway fuel economy by its fuel tank capacity, then rounding to the next higher integer value. For the purposes of this section, city and highway fuel economy are to be determined in accordance with test methods set forth in SAE J1634, "Electric Vehicle Energy Consumption and Range Test Procedure." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of J1634 may be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, PA 15096-0001, or may be inspected at the Federal Trade Commission, Public Reference Room, room 130, 600 Pennsylvania Avenue NW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(3) To determine the estimated cruising range values for dual-fueled vehicles not required to comply with the provisions of 40 CFR part 600 (other than electric vehicles), you must possess a reasonable basis, consisting of competent and reliable evidence, of:

(i) The minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on alternative fuel; and

(ii) The minimum and maximum number of miles the vehicle will travel between refuelings or rechargings when operated exclusively on conventional fuel.

#### § 309.23 Recordkeeping.

Manufacturers required to comply with this subpart shall establish, maintain, and retain copies of all data, reports, records, and procedures used to meet the requirements of this subpart for three years after the end of the model year to which they relate. They must be available for inspection by Federal Trade Commission staff members, or by people authorized by the Federal Trade Commission.

BILLING CODE 6750-01-P

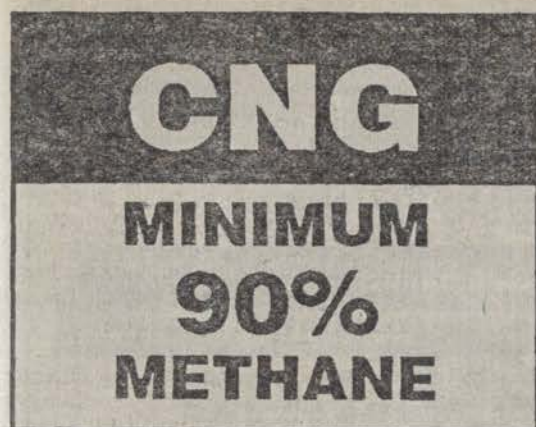


Figure 1

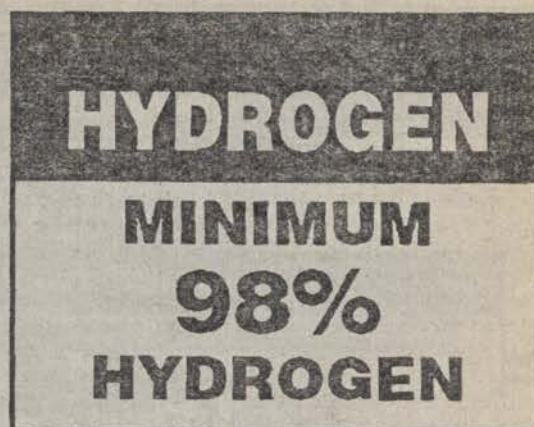


Figure 2

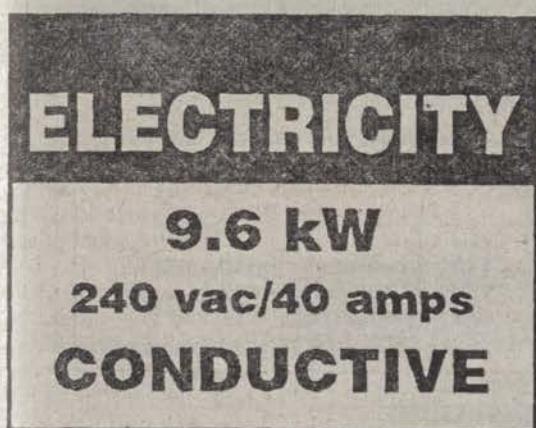


Figure 3

## AFV Buyers Guide

**Compare the Cruising Range and Emissions  
of this Vehicle with Others Before You Buy.**

### Manufacturer's Estimated Cruising Range

# 440-520

**Miles on one tank or charge**

Actual cruising range will vary with options, driving conditions, driving habits, and the vehicle's condition.

### Emissions

- ☐ This vehicle has not been certified as meeting an EPA emissions standard.
- ☐ This vehicle meets the EPA emissions standard noted below.

**More  
Emissions**



**Fewer  
Emissions**

The overall environmental impact of driving this vehicle includes many factors not measured by these standards.

**Please read back for important information.**

Figure 4

## AFV Buyers Guide

**Compare the Cruising Range and Emissions  
of this Vehicle with Others Before You Buy.**

### Manufacturer's Estimated Cruising Range

**400-480**

Miles on one tank or charge  
exclusively on alternative fuel

**440-520**

Miles on one tank  
exclusively on gasoline/diesel

Actual cruising range will vary with options, driving conditions, driving habits, and the vehicle's condition.

### Emissions

- ☐ This vehicle has not been certified as meeting an EPA emissions standard.
- ☐ This vehicle meets the EPA emissions standard noted below.

More  
Emissions

Tier I

LEV

LEV

ULEV

LEV

ULEV+  
LEV

ZEV

Fewer  
Emissions

The overall environmental impact of driving this vehicle includes many factors not measured by these standards.

**Please read back for important information.**

Figure 5

**Before selecting an Alternative Fuel Vehicle (AFV) make sure you consider:**

- ✓ **FUEL TYPE:** Know which fuel(s) power this vehicle.
- ✓ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.
- ✓ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in their cold-start capabilities (i.e., ability to start a cold engine), refueling and/or recharging time (i.e., how long it takes to refill the vehicle's tank to full capacity), acceleration rates, and refueling methods.
- ✓ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs have been developed for this vehicle and will be readily available in your area.
- ✓ **ENERGY SECURITY/DOMESTIC CONTENT OF FUEL:** Alternative fuels can reduce U.S. reliance on imported oil, especially if all of the fuel's components are produced in this country. Consider whether the fuel powering this vehicle is typically produced domestically or is imported.

**Additional Information****DEPARTMENT OF ENERGY (DOE)**

For more information about AFVs, contact DOE's National Alternative Fuels Hotline, 1-800-423-1DOE, and ask for its free brochure.

**NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)**

For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, 1-800-424-9393.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.

Figure 6

## AFV Buyers Guide

**Before selecting an Alternative Fuel Vehicle (AFV)  
make sure you consider:**

- ✓ **FUEL TYPE:** Know which fuel(s) power this vehicle.
- ✓ **OPERATING COSTS:** Fuel and maintenance costs for AFVs differ from gasoline or diesel-fueled vehicles and can vary considerably.
- ✓ **ENVIRONMENTAL IMPACT:** All vehicles (conventional and AFVs) affect the environment directly (e.g., tailpipe emissions) and indirectly (e.g., how the fuel is produced and brought to market). Compare the environmental costs of driving an AFV with a gasoline-powered vehicle.
- ✓ **PERFORMANCE/CONVENIENCE:** Vehicles powered by different fuels differ in terms of the cruising range (i.e., how many miles the vehicle will go on a full supply of fuel), cold start capabilities (i.e., ability to start a cold engine), refueling and/or recharging time (i.e., how long it takes to refill the vehicle's tank to full capacity), acceleration rates, and refueling methods.
- ✓ **FUEL AVAILABILITY:** Determine whether refueling and/or recharging facilities that meet your driving needs have been developed for this vehicle and will be readily available in your area.
- ✓ **ENERGY SECURITY/DOMESTIC CONTENT OF FUEL:** Alternative fuels can reduce U.S. reliance on imported oil, especially if all of the fuel's components are produced in this country. Consider whether the fuel powering this vehicle is typically produced domestically or is imported.

**Please read back for important information.**

Figure 7

## **Additional Information**

### **DEPARTMENT OF ENERGY (DOE)**

For more information about AFVs, contact DOE's National Alternative Fuels Hotline, **1-800-423-1DOE**, and ask for its free brochure.

### **NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA)**

For more information about vehicle safety, contact NHTSA's Auto Safety Hotline, **1-800-424-9393**.

The information on this label is required by the Federal Trade Commission, 16 CFR Part 309.

Figure 8

By direction of the Commission,  
Commissioner Varney not participating.

Donald S. Clark,

Secretary.

[FR Doc. 94-28278 Filed 11-17-94; 8:45 am]

BILLING CODE 6750-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 385

[Docket No. RM91-12-000]

#### Administrative Dispute Resolution

November 10, 1994.

AGENCY: Federal Energy Regulatory  
Commission.

ACTION: Notice of Proposed Rulemaking.

**SUMMARY:** The Commission is proposing to amend its regulations to implement the Administrative Dispute Resolution Act of 1990 (ADRA). In issuing a Notice of Proposed Rulemaking the Commission proposes to adopt a policy endorsing the use of alternative dispute resolution methods in its proceedings under the provisions of the ADRA. Such methods would be used in lieu of litigation to resolve disputes in Commission proceedings.

**DATES:** Written comments must be received by the Commission by January 17, 1995.

**ADDRESSES:** Send comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments should refer to Docket No. RM91-12-000.

#### FOR FURTHER INFORMATION CONTACT:

David N. Cook, Deputy General Counsel, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, Telephone (202) 208-0955.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System, (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To

access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1871. The full text of this notice of proposed rulemaking will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

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#### I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a notice of proposed rulemaking (NPR) to implement the Alternative Dispute

Resolution Act of 1990 (ADRA).<sup>1</sup> In the NOPR, the Commission is adopting a policy endorsing the use of alternative dispute resolution (ADR) methods in its proceedings under the provisions of the ADRA.

To implement its policy in support of alternative dispute resolution, the Commission proposes to amend Subparts E and F of Part 385 of its Rules of Practice and Procedure<sup>2</sup> to add regulations adopting provisions authorized in the ADRA and to establish procedures for approving ADR in particular proceedings.

The Commission proposes to add new Rule 604, adopting guidelines on applying ADR techniques and definitions from the ADRA and establishing procedures for the submitting, reviewing, and monitoring proposals to use ADR in specific proceedings. The Commission also proposes to add Rule 605, incorporating the provisions of the ADRA regarding binding arbitration proceedings, arbitral awards, and review of arbitration results. Third, the Commission proposes to add Rule 606, to adopt the provisions of the ADRA regarding confidentiality in ADR proceedings established under proposed new Rules 604 and 605. The Commission also proposes to amend Subparts E, F, and G of Part 385 of its Rules of Practice and Procedure to modify existing regulations and to add new regulations with respect to the submission and review of offers of settlement.

#### II. Background

The ADRA amends Chapter 5 of Title 5, United States Code, by adding a new subchapter to provide explicit statutory authorization allowing federal agencies to use ADR techniques in lieu of litigation to resolve a dispute in the agency's administrative programs when all the participants to the dispute voluntarily agree to its use. ADR methods include the use of a neutral, an individual who functions to aid the participants in resolving the controversy. The ADRA provides that ADR methods may include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination of these, as described below.<sup>3</sup>

Conciliation is an informal process in which the third party tries to bring the

<sup>1</sup> 5 U.S.C. 571-83 (1988), as amended by Pub. L. 102-354, 106 Stat. 944 (Aug. 26, 1992).

<sup>2</sup> 18 CFR Part 385.

<sup>3</sup> Drawn from Administrative Conference of the U.S., Sourcebook: Federal Agency Use of Alternative Means of Dispute Resolution (Office of the Chairman, 1987) (Sourcebook) at 44-45.

parties to agreement by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement, either informally or, in a subsequent step, through formal mediation. Conciliation is frequently used in volatile conflicts and in disputes where the parties are unable, unwilling or unprepared to come to the table to negotiate their differences.

**Facilitation** is a collaborative process used to help a group of individuals or parties with divergent views reach a goal or complete a task to the mutual satisfaction of the participants. The facilitator functions as a neutral process expert and avoids making substantive contributions. The facilitator's task is to help bring the parties to consensus on a number of complex issues.

**Mediation** is a structured process in which the mediator assists the disputants to reach a negotiated settlement of their differences. Mediation is usually a voluntary process that results in a signed agreement which defines the future behavior of the parties. The mediator uses a variety of skills and techniques to help the parties reach a settlement but is not empowered to render a decision.

**Factfinding** is a process used from time to time primarily in public sector collective bargaining. The fact finder, drawing on both information provided by the parties and additional research, recommends a resolution of each outstanding issue. It is typically nonbinding and paves the way for further negotiations and mediation.

The **minitrial** is a privately-developed method of helping to bring about a negotiated settlement in lieu of corporate litigation. A typical minitrial might entail a period of limited discovery after which attorneys present their best case before managers with the authority to settle and a neutral advisor who may be a retired judge or other lawyer. The managers then enter settlement negotiations. They may call on the neutral advisor if they wish to obtain an opinion on how a court might decide the matter. The neutral may also be called upon to mediate the dispute.

**Arbitration** is a relatively formal process in which parties jointly select the decisionmaker to whom they turn over the decisionmaking. The arbitrator, after hearing each side, issues a decision following the procedures agreed to in advance.

The ADRA requires each agency to adopt a policy that addresses the use of alternative means of dispute resolution and case management in connection with the agency's administrative actions. The Commission will fulfill this requirement with this rulemaking proceeding and through revisions to its regulations with respect to the matters under the Commission's substantive jurisdiction.<sup>4</sup>

<sup>4</sup> Under the Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565 (Aug. 4, 1988), the Chair is responsible for the administrative functions of the agency. With respect to those matters, the Commission's ADR policy is being developed separately.

As required by the ADRA, the Commission, in preparing this NOPR, has consulted with the Administrative Conference of the United States (ACUS) and reviewed the ACUS guidance to agencies in developing their ADR policies and in implementing those policies.<sup>5</sup> ACUS reviewed a draft of this NOPR. Its comments were strongly supportive and in agreement with the overall approach of the Commission's proposed implementation of the ADRA.

The Congress further encouraged the use of ADR procedures in the Energy Policy Act of 1992. Section 1802(e) of that Act directed the Commission to establish appropriate ADR procedures, including required negotiations and voluntary arbitration, early in oil pipeline proceedings as a method preferable to adjudication in resolving disputes related to rates. The Commission did so by issuing Order No. 561, Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992 on October 22, 1993.<sup>6</sup> The revisions to Part 343, Chapter I, Title 18, *Code of Federal Regulations* will be effective January 1, 1995. Additionally, Vice President Gore's National Performance Review recommended that federal agencies expand their use of ADR techniques.

On April 17, 1991, the Commission issued a Notice of Inquiry (NOI) seeking comments on: (1) how best to implement the ADRA, (2) whether changes in the Commission's regulations are necessary or appropriate to facilitate the use of alternative means of dispute resolution, and (3) whether changes in the Commission's regulations governing settlements are necessary or appropriate.<sup>7</sup>

The NOI highlighted the statutory amendments promulgated by the ADRA. These include definitions, guidelines on when ADR techniques should not be used, guidelines for the selection and use of neutrals, provisions to protect the confidentiality of ADR proceedings, and standards for the conduct of binding arbitration proceedings and the issuance of arbitration awards. Under ADRA, the decision to use, or not to use, ADR methods is left to the discretion of the agency and is not subject to judicial review.

<sup>5</sup> Administrative Conference of the U.S., *The Administrative Dispute Resolution Act: Guidance for Agency Dispute Resolution Specialists* (Office of the Chairman, 1992).

<sup>6</sup> 58 FR 58753 (Nov. 4, 1993), III FERC Stats. & Regs. Preambles ¶ 30,985; *order on reh'g*, Order No. 561-A, 59 FR 40243 (Aug. 8, 1994), III FERC Stats. & Regs. Preambles ¶ 31,000 (July 28, 1994).

<sup>7</sup> Administrative Dispute Resolution Notice of Inquiry, 56 FR 18789 (Apr. 24, 1991), IV FERC Stats. & Regs. Notices ¶ 35,523 (1991).

Eighteen comments were filed in response to the NOI on behalf of several pipelines, electric utilities, interest groups, and the industry.<sup>8</sup> In general, the commenters support the implementation by the Commission of the ADRA and the use of ADR methods under the guidelines set out in the ADRA. The commenters commend the Commission's past use of settlement procedures and various ADR methods to resolve disputes and expedite the conclusion of proceedings, but believe that additional measures are needed to resolve contested issues and conclude proceedings more expeditiously through settlement or other means.

The commenters are divided on whether regulations are needed to implement the ADRA. Several commenters express concern about the misuse of ADR methods. The commenters present several suggestions on the potential uses for ADR methods to resolve disputes concerning a variety of issues and proceedings.

In addition, the commenters support the Commission's policy in favor of settlements and do not request changes in the overall framework established by the settlement regulations. However, a number of the commenters request a variety of specific changes with a view toward prompter action on all settlements. Included are requests to provide for the filing and review of omnibus settlements and to modify the conditions that govern an ALJ's certification of a contested settlement to the Commission, including the need for unanimity in a motion to omit the initial decision.

### III. Application of Alternative Dispute Resolution to Commission Proceedings

The ADRA directs the Commission to consider the potential uses for ADR methods in connection with: (1) Formal and informal adjudications, (2) rulemakings, (3) enforcement actions, (4) issuing and revoking licenses or permits, (5) contract administration, (6) litigation brought by or against the agency, and (7) other agency actions.

It is the policy of the Commission to conclude its administrative proceedings as fairly, effectively, efficiently, and expeditiously as possible. To that end, the Commission has long had in place flexible settlement regulations that encourage and promote the use of settlement negotiations and other means to resolve disputes. The ADRA gives the Commission the opportunity to further develop and refine its policies to achieve less costly, less contentious, and more timely decisions in its

<sup>8</sup> See Appendix.

proceedings. Under the existing framework for the review and determination of its proceedings, the Commission intends to foster the effective and sound use of innovative ADR procedures pursuant to the guidelines established in the ADRA.

The Commission now will encourage participants in its administrative proceedings to consider the use of ADR procedures to assist them in resolving any differences among them. ADR techniques are informal procedures based on the informed consent of all the participants. Flexibility is the mainstay of ADR. Thus, the Commission will not attempt to identify in advance all of the ADR methods that may be used in its proceedings.

Creativity is an essential element in designing the appropriate ADR method for a particular dispute and for a particular set of parties. The ADRA opens up possibilities for the expanded use of new and varied ADR methods not typically used under the current settlement regulations or otherwise during a proceeding, including roles for third-party neutrals. The ADRA offers expanded opportunities for alternatives to protracted litigation in appropriate circumstances where the use of ADR yields more effective and efficient results.

The opportunities for using ADR can occur at any time during the processing of any filing, whether the filing is subject to informal adjudicatory procedures or to the formal hearing process. If a filing is set for hearing, opportunities for ADR may arise during the initial settlement process prior to direct testimony in rate cases or prior to the 30-day post-notice period in gas certificate cases, as well as any time during the presiding officer's management of the hearing process. Numerous opportunities for ADR also exist in proceedings where formal hearings are not used. These include hydropower cases under the revised licensing process, various enforcement actions, or complaint cases, among others.

Of course, parties are encouraged to pursue ADR methods on their own to resolve potential disputes before an application or other filing is submitted to the Commission. Parties to a transaction may wish to include dispute resolution provisions for resolving future conflicts in a contract or tariff that is filed with the Commission.

This notice will examine certain areas of administrative action identified by the ADRA to determine the potential for using ADR methods. These areas include formal and informal adjudications, enforcement actions, the

issuing and revoking of licenses or permits, and other actions arising under the Commission's substantive statutes. No particular formula has been developed as to how ADR methods should be used, how they relate to the traditional processes, and what their advantages and disadvantages are in particular settings. Thus, the purpose of the examination is only to indicate the broad spectrum of the possibilities for expanded ADR use in the Commission's proceedings as well as the Commission's intention to consider any method for participants to work towards resolving their differences, in appropriate circumstances.<sup>9</sup>

#### *A. The Range of Commission Administrative Proceedings*

The Commission oversees key operating functions of the Nation's natural gas, electric utility, hydroelectric power, and oil pipeline transportation industries. To do so, the Commission administers numerous statutes and regulations that establish procedures for the filing of applications to authorize, among other things, certificates for the construction and operation of natural gas facilities, rates and service conditions for the transportation and sale for resale of natural gas and electric energy in interstate commerce, rates and terms and conditions of services for the transportation of petroleum, and licenses for the construction and operation of hydroelectric power projects. The regulations also provide for the Commission's review of enforcement actions, complaints, accounting matters, and other actions related to its certification or licensing and ratemaking functions.

Because of the complexity of the issues and the number of persons with interests in the outcome of the issues, many filings are contested and lead to highly litigated, complicated, and protracted proceedings. The Commission in many cases sets the filings for adjudication under the formal, trial-type hearing procedures set forth in Subpart E of Part 385 of the Commission's Rules of Practice and

Procedure. In response to the NOI, the commenters identified certain significant issues that are contested in many of the filings and earmark the filings that could particularly benefit from innovative ADR methods.

For example, in determining whether an application for a certificate to construct and operate natural gas facilities is consistent with the public convenience and necessity, the Commission must resolve such issues as the sources and adequacy of supply and market for gas, safety and operational aspects, financing, and environmental impacts. Environmental analysis is becoming increasingly complex and time-consuming. As a result, the Commission has been issuing phased orders that provide a preliminary determination on non-environmental issues or on discrete portions of a project while continuing the review process.<sup>10</sup> A major factor in many of these cases is the timely construction of a proposed project. The use of innovative ADR methods may help to accelerate the conclusion of these applications.

Applications to establish natural gas, electric, or oil rates and terms of service are determined on the basis of whether the proposals are just, reasonable, and not unduly discriminatory or preferential. Issues that arise, such as the prudence of the purchasing practices of the pipeline or electric utility, have in the past proved highly litigious involving extensive discovery.

The traditional method for setting rates uses a cost-based process, which can involve extensive analysis. However, the Commission has begun to approve market-based rates in certain circumstances if the seller lacks market power. Determining a seller's market power requires an extremely detailed factual analysis of sophisticated and contentious issues. As a result, some of the inquiries have led to complicated and lengthy proceedings in oil rate filings,<sup>11</sup> natural gas rate proceedings,<sup>12</sup> and electric rate cases.<sup>13</sup> Electric utilities also seek Commission authority for various corporate transactions, such as mergers, which can require a hearing to consider issues concerning costs,

<sup>9</sup> Williams Natural Gas Company suggests that the Commission require every company that comes before the Commission seeking affirmative relief to show that it has formally adopted a policy supporting ADR. Clearly, a commitment by each party in a proceeding in support of ADR would be helpful to promote the goals established in the Commission's policy. Parties should attempt to work out their differences in advance of a filing, as well as in the early stages of a contested proceeding before the disputes result in lengthy litigation. However, the Commission believes that imposing this condition on parties is neither necessary nor appropriate at this time.

<sup>10</sup> E.g., Northwest Pipeline Corp., 56 FERC ¶ 61,006 (1991); Great Lakes Transmission Limited Partnership, 56 FERC ¶ 61,051 (1991).

<sup>11</sup> E.g., Williams Pipe Line Co., 68 FERC ¶ 61,136 (1994), *reh'g pending*; Buckeye Pipe Line Co., L.P., 53 FERC ¶ 61,473 (1990); *reh'g granted in part and denied in part*, 55 FERC ¶ 61,084 (1991).

<sup>12</sup> El Paso Natural Gas Co., 54 FERC ¶ 61,316 (1991), *reh'g*, 56 FERC ¶ 61,290 (1991); Transcontinental Gas Pipe Line Corp., 55 FERC ¶ 61,446 (1991), *reh'g*, 57 FERC ¶ 61,345 (1991).

<sup>13</sup> PSI Energy, Inc., Opinion No. 349, 49 FERC ¶ 61,346 (1989).

rates, and the competitive situation.<sup>14</sup> Although many of these filings are settled, innovative ADR methods should be useful in clarifying the many complex issues and bringing the many parties together to achieve settlement more quickly.<sup>15</sup>

ADR may be particularly useful in resolving an array of complex transmission issues facing the electric utility industry in the competitive era following the Energy Policy Act of 1992 (EPAct). Recently, several utilities have volunteered to open their transmission systems. Other utilities have been ordered to attempt to negotiate transmission services under the newly amended Sections 211 and 212 of the Federal Power Act. The Commission is also in the process of analyzing new concepts for the pricing of transmission services. In addition, there has been considerable activity across the country in the development of regional transmission groups to provide vehicles for the voluntary resolution of transmission access and pricing disputes. ADR will be an important component of RTG agreements.<sup>16</sup>

Whether transmission access and pricing are voluntary or pursuant to a Section 211 Commission order, ADR could make an important contribution by facilitating resolution of complex technical issues. Prompt resolution of disputes over transmission services could often mean the difference between success and failure of short-term transactions under an open access transmission system.

Environmental issues and the balancing of various competing uses for water resources are significant factors in the review of applications to license or relicense a hydropower project.<sup>17</sup> Under recently revised application procedures, the Commission evaluates the environmental and developmental impacts of a project by a process that includes extensive pre-filing consultation, considers the recommendations of various agencies and other concerned groups, and balances all relevant public interest considerations.<sup>18</sup> These issues can be

highly contentious and frequently involve numerous parties with conflicting interests. In all of these cases, there may be a role for ADR.

#### *B. Current Commission Practice and Procedures for Resolving Disputes by Alternative Means*

The Commission has for a long time relied on voluntary settlement procedures to avoid litigation and for the orderly, expeditious conduct of its business. Over the years, the Commission, the ALJs, and the federal courts have agreed that voluntary settlements are important and desirable methods of avoiding the delays and uncertainties of litigation.<sup>19</sup>

In response to the NOI, the commenters commend in general the Commission's settlement rules and procedures, which they state have provided beneficial mechanisms for resolving contested issues. According to the Federal Energy Bar Association (FEBA), the Commission is far ahead of many other federal agencies in promoting the settlement process. The commenters request that the Commission's existing procedures not be undermined in implementing the ADRA and that the Commission continue to promote the innovative settlement techniques allowed under the current rules.

As the commenters point out, the current settlement rules provide a simplified, flexible mechanism for initiating and approving a settlement in any proceeding. Specifically, Rule 601 provides for the convening of conferences by the Commission or the decisional authority, upon motion of any participant or otherwise, in any proceeding for any purpose, including consideration of offers of settlement, related to the conduct or disposition of the proceeding. Rule 602 provides the procedures for the submission of offers of settlement and for their review by the ALJ or the Commission. The rules were adopted to encourage participants in all proceedings to avoid the alternative of costly and sometimes lengthy litigation before the Commission.<sup>20</sup>

In any proceeding set for hearing, Rule 603 allows the Commission, the presiding ALJ, or a participant to request appointment of a neutral settlement judge to preside over settlement negotiations.<sup>21</sup> This procedure was added to the settlement rules to reduce the inherent and tactical delays in the settlement process and to provide structure and control over the pace of negotiations.<sup>22</sup> The Commission has found that these rules are sufficiently broad to enable the Commission and the ALJs to convene conferences and handle settlements expeditiously.<sup>23</sup>

The Commission has taken an active role in promoting the settlement rules and providing opportunities for the initiation of settlements at the outset of all its proceedings. For example, the Commission adopted top sheet procedures that provide for a settlement conference to be convened during the pre-hearing stage of a rate case set for hearing.<sup>24</sup> Whether under these or other procedures, Commission trial staff presents a settlement position which serves as a basis for negotiations among the parties in an effort to reduce the need for detailed testimony or formal hearing. Procedures were also adopted to encourage settlement in each gas certificate application filed for blanket authority and certain other authority.<sup>25</sup> If a protest is filed in response to the notice of the filing of such an application, a 30-day period is established for the parties and Commission staff to establish informal settlement conferences to resolve the protest.

The Commission also directs the parties to consider settlements on a case-by-case basis. In Order No. 528, the Commission encouraged pipelines and their customers to reach settlements concerning any proposed method for recovery of take-or-pay costs, and determined that settlement conferences should be used to that end.<sup>26</sup>

<sup>21</sup> The Commission's settlement judge procedures are recommended by the Administrative Conference of the United States as one of the settlement techniques that the Administrative Conference urges agencies to use routinely. Sourcebook at 116, n.3.

<sup>22</sup> Rules of Practice and Procedure, Order No. 90, 45 FR 45902 (July 8, 1980), FERC Stats. & Regs. Preambles 1977-81 ¶ 30,169 (June 23, 1980).

<sup>23</sup> Revision of Rules of Practice and Procedures to Expedite Trial-Type Hearings, Order No. 225, 47 FR 19014 (May 3, 1982), FERC Stats. & Regs. Preambles 1982-85 ¶ 30,358 (Apr. 26, 1982); Order No. 225-A, 47 FR 35952 (Aug. 18, 1982), FERC Stats. & Regs. Preambles 1982-85 ¶ 30,385 (Aug. 12, 1982).

<sup>24</sup> Initiated by Administrative Order No. 157, Apr. 1, 1976.

<sup>25</sup> 18 CFR 157.205(g).

<sup>26</sup> Mechanisms for Pass-through of Pipeline Take-or-Pay Buyout and Buydown Costs, 53 FERC

<sup>14</sup> Northeast Utilities Service Co., Opinion No. 364, 56 FERC ¶ 61,269 (1991).

<sup>15</sup> Kansas Power & Light Co., 54 FERC ¶ 61,077 (1991).

<sup>16</sup> Policy Statement Regarding Regional Transmission Groups, 58 FR 41626 (Aug. 5, 1993), III FERC Stats. & Regs., Regulations Preambles ¶ 30,976 (1993) (Policy Statement).

<sup>17</sup> Central Nebraska Public Power and Irrigation District, Project No. 1417-017, 50 FERC ¶ 61,180 (1990), order on reh'g, 51 FERC ¶ 61,256 (1990).

<sup>18</sup> Hydroelectric Relicensing Regulations Under the Federal Power Act, Order No. 513, 54 FR 23756 (June 2, 1989), FERC Stats. & Regs. Preambles 1986-90 ¶ 30,854 (May 17, 1989); Order No. 513-A, FERC

Stats. & Regs. Preambles 1986-90 ¶ 30,869 (Dec. 26, 1989); Regulations Governing Submittal of Proposed Hydropower License Conditions and Other Matters, Order No. 533, 56 FR 23108 (May 20, 1991), III FERC Stats. & Regs. Preambles ¶ 30,921 (May 8, 1991); Order No. 533-A, III FERC Stats. & Regs. Preambles ¶ 30,932 (Nov. 22, 1991).

<sup>19</sup> Texas Gas Transmission Corp. v. FPC, 441 F.2d 1392, 1394 (6th Cir. 1971); Texas Eastern Transmission Corp. v. FPC, 306 F.2d 345, 347 n.2 (5th Cir. 1962).

<sup>20</sup> Procedures for Submission of Settlement Agreements, Order No. 32, 44 FR 34936 (June 18, 1979), FERC Stats. & Regs. Preambles 1977-81 ¶ 30,061 (June 13, 1979); Order No. 32-A, 8 FERC ¶ 61,160 (1979).

Consequently, the Commission has directed the convening of a settlement conference in each proceeding in which the Commission accepts and suspends rate filings pursuant to Order No. 528. This has resulted in the settlement of many of these cases.<sup>27</sup> In fiscal year 1993, the Commission established 30 proceedings under Order Nos. 528 and 528-A to resolve issues by settlement. By September 30, 1993, the Commission had approved 19 settlements and more settlements were pending.<sup>28</sup>

Under the current settlement procedures, the Commission has been able to settle a large number of contested proceedings. Approximately 70 to 80 percent of electric and gas rate cases settle without the need to complete the litigation process. During fiscal year 1992, the Commission issued 50 hearing orders involving 64 electric rate filings and accepted 45 settlement agreements in electric rate cases. During fiscal year 1993, the Commission issued 28 orders instituting hearing or settlement judge procedures involving 31 electric rate filings and accepted 29 offers of settlement resolving some or all of the issues presented. An examination of the electric proceedings that settled reveals that settlement generally is reached shortly after the establishment of hearing procedures and the commencement of settlement conferences.<sup>29</sup>

A total of 41 new gas and oil pipeline filings were set for hearings in fiscal year 1993. Also during fiscal year 1993, the Commission approved 34 settlements of gas and oil pipeline rate cases. For example, one settlement resolved issues in 33 different dockets, many of which were at different stages of processing at hearing.<sup>30</sup> Settlements also are frequently used to resolve disputes between the Commission's Enforcement section and violators of pertinent statutory or regulatory requirements in order to terminate enforcement proceedings before full litigation.<sup>31</sup>

For the most part, the Commission's existing settlement procedures fit into a category that might be called "unassisted negotiation." What

distinguishes the ADR techniques highlighted in the ADRA from settlement negotiations under the Commission's existing rules is the addition of a neutral, so that the process becomes one of "assisted negotiation." However, many commenters point out that, under the Commission's current settlement rules, parties are able to avail themselves of a wide variety of ADR techniques that involve the informal use of a neutral. They urge the Commission to continue supporting the flexible use of these procedures in developing mechanisms to resolve disputes.

The Commission has incorporated the use of a wide variety of ADR techniques in attempting to resolve disputes and bring its cases to settlement. The settlement conference and settlement judge procedures often involve techniques characteristic of those identified in the ADRA. The convener of the conference or the settlement judge employs such ADR techniques as conciliation, facilitation, mediation, and fact-finding to bring the parties together to discuss their differences. The settlement judge is expected to take an active role in the process as a facilitator or mediator to keep the parties talking. In cases set for hearing, trial staff plays an active and important role in facilitating settlements at the prehearing conference (for example, through its top sheets), other settlement conferences, or any time during the hearing.

The Commission and the ALJs have begun to encourage the use of more structured ADR methods not typically used in the settlement procedures but that specifically include the additional methods identified in the ADRA. The Commission has recently made more use of the settlement judge procedure in an effort to resolve a case without having to institute a hearing or some other form of investigation.<sup>32</sup> In July, 1994, the Commission initiated a multi-party negotiation process in the *New Don Pedro* proceeding, Project No. 2299. The negotiations are being led by mediators from the Federal Mediation and Conciliation Service. The goal of the mediators is to obtain a consensus on the issues surrounding the in-stream flow from the New Don Pedro Dam. In another example, under section 343.5 of the new oil pipeline regulations, which go into effect in January 1995, all protested rate filings will be sent initially to a settlement judge for possible resolution by negotiation. The participants may also request the use of

other ADR procedures to resolve all or part of any pending matter.<sup>33</sup> There is substantial commonality between the ADR provisions for oil pipelines and the rules proposed here. The Commission is interested in obtaining comment on whether to integrate the oil pipeline provisions into these proposed rules, so that the Commission would then have a single set of ADR rules.

In addition, the Commission has adopted shortened and simplified procedures to resolve disputes on an informal basis in a wide range of proceedings. These include the Enforcement Task Force Hotline to resolve complaints before a filing is made and, under the accounting rules, the option of an abbreviated process for resolving accounting disputes.<sup>34</sup> Under the revised regulations governing the filing and review of hydropower licensing applications, the Commission has incorporated mechanisms in the pre-filing consultation process that permit the applicant or parties to refer disputes to the Director of OHL for resolution.<sup>35</sup> The Commission has made clear that it intends to do everything possible to encourage all the participants to work out their differences at any stage of the consultation process.<sup>36</sup> The Commission has also used settlement processes to attempt to resolve hydropower environmental and water resource issues after an application has been filed.<sup>37</sup>

The Commission's settlement procedures have provided a framework of sufficient flexibility to enable the Commission to pursue settlement and the expeditious conclusion of proceedings before the full litigation of the issues at formal hearing. The Commission does not propose to undermine the existing settlement procedures, but instead will continue to promote their use through specific regulations or on a case-by-case basis.

The Commission expects the use of settlement and other procedures to continue to reduce the conflicts in cases and promote conclusion of cases without full litigation. The procedures currently used would not be interrupted or affected by the policies proposed in

<sup>27</sup> 61,163 (1990); Order No. 528-A, 54 FERC

<sup>28</sup> 61,095 (1991); Order No. 528-B, 55 FERC ¶ 61,372 (1991).

<sup>29</sup> E.g., *Arkla Energy Resources*, 54 FERC ¶ 61,011 (1991) and 58 FERC ¶ 61,359 (1992).

<sup>30</sup> FERC 1993 Annual Report at 7.

<sup>31</sup> E.g., *Indiana Michigan Power Co.*, 51 FERC ¶ 61,191 (1990); *reh'g*, 56 FERC ¶ 61,019 (1991); *Cincinnati Gas & Electric Co.*, 46 FERC ¶ 61,298 (1989) and 51 FERC ¶ 61,162 (1991).

<sup>32</sup> *El Paso Natural Gas Co.*, 54 FERC ¶ 61,316 (1991), *reh'g*, 56 FERC ¶ 61,290 (1991).

<sup>33</sup> *The Washington Water Power Co.*, Project No. 2545, 56 FERC ¶ 61,048 (1991).

<sup>34</sup> See *Central Maine Power Co.*, 65 FERC ¶ 61,296 (1993); *Edwards Manufacturing Company, Inc.*, 63 FERC ¶ 61,199 (1993); *UNITIL Power Company v. Public Service Company of New Hampshire and Northeast Utilities*, 62 FERC ¶ 61,055 (1993).

<sup>35</sup> Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992, 58 FR 58753, 58781 (Nov. 4, 1993).

<sup>36</sup> 18 CFR 41.2, 158.2.

<sup>37</sup> Order No. 513, FERC Stats. & Regs. Preambles, 1986-1990 ¶ 30,854, at 31,393-96, Rule 16.8(b)(5); Order No. 533, III FERC Stats. & Regs. Preambles ¶ 30,921, at 30,125-27 (1991), Rule 4.38(b) and (c).

<sup>38</sup> Order No. 533, III FERC Stats. & Regs. Preambles ¶ 30,921, at 30,126.

<sup>39</sup> See, e.g., *Edwards Manufacturing Company, Inc.*, 63 FERC ¶ 61,199 (1993) (order directing appointment of settlement judge).

this notice. The ALJs and other Commission staff are expected to continue to take the initiative not only in implementing traditional methods of establishing settlements through negotiation or mediation, but also in considering the newer methods, such as minitrials, reflected in recent cases. The ADR rules proposed here would supplement the Commission's existing rules and practices regarding settlement.

#### IV. Proposed Rules

The Commission believes that regulations are needed to provide guidance to the parties in instituting an ADR procedure under the provisions of the ADRA and to avoid confusion or uncertainty about the integration of ADR methods into the Commission's overall decision-making process. Therefore, the Commission is proposing regulations to facilitate the use of ADR in Commission proceedings and to provide guidance for such proceedings. The new ADR provisions are intended to supplement existing Commission settlement regulations, and not to limit or replace them in any way. The Commission expects that the new rules will result in more effective, fair, timely, and less costly dispute resolution.

Because the use of ADR complements current settlement practices, the Commission proposes to include the proposed rules in Subpart F of Part 385 of the Commission's Rules of Practice and Procedure concerning settlements. Specifically, Rule 601(a) would be revised to provide for the convening of conferences to evaluate whether ADR is practicable in a particular proceeding. New Rule 604 is proposed to establish a mechanism for filing proposals to use ADR, Rule 605 to adopt the provisions in the ADRA for binding arbitration procedures, and Rule 606 to adopt the provisions in the ADRA for confidentiality in ADR proceedings. The settlement rules are retained separately so that as many options as possible would be available for expediting resolution of disputes before the Commission.

Apart from the provisions in proposed Rule 605 for binding arbitration proceedings, these proposed rules do not include separate provisions for the Commission's review of the ultimate outcome of an ADR proceeding. It is the Commission's intent that the ultimate outcome of an ADR proceeding, like any other settlement, be subject to Commission review in a manner that conforms with the Commission's statutory duties using existing procedures for evaluating settlements. As with the outcome of any settlement, the Commission's approval of the

outcome of the ADR method used in a particular proceeding would not constitute approval of, or precedent regarding, any principle or issue in that proceeding. To the extent ADR techniques are used to resolve issues in licensing or certificate cases, that resolution would become part of the Commission's evaluation of any license or certificate that might be issued.

#### A. Initiating the Use of an ADR Method

The Commission seeks to encourage parties to consider the use of ADR as a routine part of the Commission's decision-making processes. Accordingly, the Commission proposes to amend Rule 601(a) by adding at the end of Rule 601(a) the words "or the use of alternative dispute resolution procedures" to specifically provide for a conference to address the possibility of using ADR techniques. The Commission also proposes to amend Rule 504(b)(7) to conform to the amendment proposed in Rule 601(a).

By amending the rules to expressly identify ADR as a potential topic for conferences convened by ALJs or any other decisional authority, participants will be encouraged to request a conference for the purpose of determining whether an ADR proceeding would be appropriate for resolving the participants' differences. In addition, the proposed amendments would comport with the ADRA, which amended Section 556(c) of the Administrative Procedure Act (APA) to authorize ALJs to consider the use of ADR methods when they are holding conferences for settlement of the issues.

The Commission does not propose to require ADR or to impose a deadline on parties to decide whether to use ADR. Thus, as under the existing rule, a conference could be convened at any time during any proceeding.

The ADRA also amended Section 556(c) of the APA to allow the presiding officer to require the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning resolution of issues in controversy. This authority already is included in existing Rule 601(b)(2), which requires that any person in a representative capacity at a conference be authorized to act as a principal with respect to the matters to be addressed.

In addition, the Commission's Rule 601(b)(3) provides that the failure of any party to attend a conference convened under Rule 601(a) constitutes waiver of all objections that party may have to any order or ruling arising out of, or agreement reached at, the conference. That condition would apply as well in

the context of a conference at which an agreement to use ADR was reached. Rule 601(b)(3) would operate to waive an absent party's objections to an ADR proposal reached in the conference if the conference was noticed in advance as a conference addressing the possibility of using ADR.

The Commission does not believe that such provisions are inconsistent with the voluntary nature of ADR. First, while a party may be required to attend a conference that is convened for purposes of discussing whether ADR would be appropriate, attendance does not require a party to agree to the use of any dispute resolution proposal. Second, because a proposal to use ADR must be supported by all participants, it is not unreasonable to require the participants to attend or consider non-attendance as consent to the process.

The Commission proposes an exception for proposals to use binding arbitration under proposed new Rule 605. In those cases, it is proposed in Rule 605(a)(5) to require the express consent of all interested parties to such an agreement. Thus, a party's absence from a conference under Rule 601 would not waive the party's rights to object to use binding arbitration under Rule 605.

ADRA further amended Section 556(c) of the APA to require ALJs to inform the parties as to the availability of ADR methods and to encourage the use of such methods. The Commission expects all of its staff, including its ALJs, to use the conference procedures, among others, to facilitate the use of ADR in appropriate proceedings.

#### B. Mechanism for Using ADR in a Commission Proceeding

Rule 603 provides procedures for the parties or the Commission to incorporate the use of settlement negotiations in Commission proceedings. Rule 602 establishes procedures for the submission and review of written offers of settlement. The Commission proposes to provide in new Rule 604 similar procedures that participants can use to incorporate in a proceeding the use of any ADR method, apart from settlement negotiations which are covered in Rule 603. The mechanism would consist of procedures for the filing and review of a proposal to use a particular ADR method. Rule 604 proposes to adopt the standards set out in the ADRA for the Commission to determine whether the use of ADR in a proposal would be appropriate in that proceeding. Proposed Rule 604 also adopts most of the definitions in the ADRA to facilitate the use of ADR methods.

The written approval mechanism is intended to allow for the orderly processing of the Commission's business. The Commission does not intend the new written mechanism to replace the current practice of parties using informal means to reach settlements. As a general rule, the Commission allows parties flexibility in resolving their disputes.

### 1. Applicability

Proposed new Rule 604(a)(1) provides that participants may, subject to the limitations of subparagraph (a)(2) of that section, use ADR to resolve any issue in a pending matter, so long as all of the participants agree to using the procedures.

The ADRA lists six factors for an agency to consider when identifying cases in which the use of ADR would not be appropriate. The Commission proposes to adopt these factors in subparagraph (a)(2) of Rule 604 and to require that they be considered whenever a proposal to use ADR is made. Thus, the new rule would provide that the appropriate decisional authority will consider not using ADR if: (1) a definitive resolution is required for precedential value; (2) the matter involves significant questions of policy requiring additional procedures before final resolution; (3) maintaining established policy is of special importance; (4) the matter significantly affects persons or organizations who are not parties to the proceeding; (5) a full public record of the proceeding is important and the record cannot be provided by dispute resolution; or (6) the Commission must maintain continuing jurisdiction of the matter and dispute resolution would interfere with the Commission's authority to alter the disposition of the matter if circumstances change.

The use of alternative means of dispute resolution when any of these factors is present is not absolutely prohibited under the proposed rule. As proposed, Rule 604(a)(3) provides that ADR may be used if the dispute resolution proceeding can be structured to avoid the identified problem or if other concerns significantly outweigh one or more of the factors.

Rule 604(a)(4) incorporates the ADRA's provision that the agency's decision to use or not to use an ADR proceeding is not subject to judicial review. Proposed Rule 604(a)(5) provides that settlement agreements reached through the use of ADR will be subject to the Commission's existing Rule 602, notice and comment procedures, unless the decisional

authority, upon motion or otherwise, orders a different procedure.

### 2. Definitions

The Commission believes that certain of the definitions found in the ADRA are helpful and proposes to incorporate these in Rule 604(b).

In the proposed rules, the Commission will use "party" and "participant" as defined in Rule 102.<sup>38</sup> While staff is not included in the definition of "party," it is a "participant." As discussed below, the proposed rules provide for the full participation of parties and staff in the ADR process to the same extent as in the settlement process.

The definition of participant in Rule 102 does not expressly identify the additional entities that are permitted to participate in the application procedures in the Commission's rules for a license or exemption to construct, operate, and maintain a hydroelectric project. To ensure that all participants in such hydroelectric proceedings also may participate in any matters concerning ADR under Subpart F of the Commission's regulations, the Commission proposes to adopt a definition of "participant" in Proposed Rule 604(b)(8) that includes these entities, which may be state and federal agencies and Indian tribes having statutory roles or a direct interest in the hydroelectric proceedings, as participants in ADR proceedings.

### 3. Submission of a Proposal to Use ADR

The ADRA does not address the process for participants to follow in implementing ADR. As indicated, the Commission believes that it would be helpful to have in place a process for approving the use of certain ADR methods in Commission proceedings. This would give the participants a framework within which to use ADR. The proposal should be written to avoid procedural disagreements during the ADR proceeding. A written proposal also is needed by the decisional authority to determine the appropriateness of using ADR in the proceeding and whether to suspend action on a matter to give participants the opportunity to resolve their disputes by means of an ADR process.

a. *The Filing.* Existing Rule 602 permits participants to file an offer of settlement at any time during a proceeding. Because ADR is meant to supplement existing settlement procedures, the Commission proposes that the same opportunities be available for filing ADR proposals. Consequently,

Proposed Rule 604(e)(1) permits the participants to submit a written proposal at any time during a proceeding to use ADR to resolve all or part of any matter in controversy or anticipated to be in controversy in the proceeding.

Except for the binding arbitration process identified in the ADRA and incorporated in proposed Rule 605, the Commission does not propose to identify the specific ADR methods available to the parties nor to mandate specific procedures for each type of ADR, but leaves the selection and procedures to the discretion of the participants. The ADRA does not limit the ADR procedures available to the participants, and the Commission does not propose to do so independently. The proposed rules are intended to allow participants the flexibility to create their own ADR procedures. ADR may be appropriate in particular proceedings, but the Commission will not try to identify in advance the various types of cases in which ADR would be appropriate. The participants should feel free to propose any type of ADR in any proceeding.

Proposed Rule 604(e)(2) provides that, if a proceeding is pending before an ALJ, the proposal must be filed with the ALJ. Proposed Rule 604(e)(3) provides that, if a proposal involves binding arbitration, it must be filed with the Secretary for consideration by the Commission. For all other matters, proposed Rule 604(e)(4) provides that a proposal to use ADR may be filed with the Secretary, who would transmit the proposal to the appropriate decisional authority. If authority to act on a matter has already been delegated to the staff, the staff member would also consider a related ADR proposal. For matters not delegated to the staff, the Commission would be the appropriate authority to review an ADR proposal.

Proposed Rule 604(e)(6) allows the participants to modify the ADR proposal once it has been approved and provides that requests to modify must follow the same procedure as proposals for ADR.

b. *Contents of the Proposal to Use ADR.* Proposed Rule 604(f) identifies the information that the proposal should contain. The proposal should be written. It should be signed by all participants to demonstrate that all participants support the use of ADR, or include other evidence to indicate unanimous support.<sup>39</sup>

Under the ADRA, any use of ADR proceedings must be voluntary on the

<sup>39</sup> This evidence could include attendance at a conference where the proposal is adopted, or waiver of the right to consent by documented failings to attend.

<sup>38</sup> 16 CFR 385.102(b) and (c).

part of the participants. The Commission is not willing to create different levels of participants for purposes of determining whether the participants support using an ADR proceeding. The Commission does not propose to require less than the unanimous consent contemplated by the ADRA. Nonetheless, the Commission requests further comment on whether some limitation, based upon directness of interest or otherwise, should be considered.

It should be restated, however, that under Rule 601(b)(3), any party who fails to attend a conference convened for the purpose of determining whether to use ADR waives any objection to decisions made about an ADR proposal at that conference. Thus, the unanimous consent is by those participants who choose to attend a conference convened for the purpose of determining whether to use ADR. As indicated, there would be an exception for binding arbitration proposals under proposed Rule 605(a)(5), which proposes to require express consent of all parties in such a proposal.

A proposal to use ADR should also include a general description of the matters to be pursued so that the ALJ or other decisional authority can assess the proposal under the criteria set forth in proposed Rules 604(a) (2) and (3). An ADR proposal could also provide a description of the ADR process to be used. If the participants desire a neutral, the proposal could indicate the neutral that is chosen by the participants, or the mechanism by which a neutral would be chosen. (The neutral is further discussed below.) Because the agreement will govern the process, the participants should carefully consider and define issues in advance. Points to be covered could include the option of having a neutral, the neutral's role, issues to be considered, and procedural matters such as the order and schedule of proceeding.

*c. Determination by the Decisional Authority.* Proposed Rule 604(e)(5) provides for the issuance of an order by the decisional authority approving or denying a proposal filed under Rule 604 or Rule 605. The decisional authority would determine whether ADR would be appropriate for a particular proceeding on a case-by-case basis, using the guidelines set forth in proposed Rules 604(a) (2) and (3). If the decisional authority approves a proposal to use ADR, an order to that effect would be issued. If the proposal is disapproved, an order would be issued setting forth the reasons. Further, a proposal to use ADR would be deemed approved unless the decisional

authority issues an order denying approval within 30 days after the proposal is filed.

*d. Monitoring ADR Proceedings.* The Commission proposes to provide for monitoring an ADR proceeding. Proposed Rule 604(f) allows the decisional authority to require status reports on the proceeding at any time. The Commission is concerned about the possibility of delay. This provision is designed to prevent parties from using ADR as a stalling tactic.

*e. Terminating an ADR Proceeding.* In proposed Rule 604(g), the Commission would give the decisional authority, upon motion or otherwise, the authority to terminate an ADR proceeding under Rule 604 or 605 if it appears that ADR is no longer appropriate. The decision to terminate would be in the form of an order. Proposed Rule 604(g)(2) provides that a decision to terminate an ADR proceeding is not subject to judicial review because the decision is interlocutory in nature. This is consistent with our existing settlement negotiation procedures in Rules 603 (h) and (i). Parties may seek Commission review of such a decision under Rule 715 in cases pending before an ALJ or, in all other cases, under Rule 212 as a motion for reconsideration.

#### 4. Selection and Use of Neutrals

The ADRA contains a full section concerning the selection and use of neutrals in ADR proceedings. The Commission proposes to adopt the definition of neutral in the ADRA and to incorporate most of the provisions in the ADRA regarding neutrals.

Rule 604(c) proposes that a neutral may be a permanent or temporary officer or employee of the Federal Government, (including an ALJ), or any other individual who is acceptable to the participants in an ADR proceeding. A neutral may not have any official, financial, or personal conflict of interest with respect to the issues in controversy. While the Commission proposes to adopt the proviso in the ADRA that such a neutral may nevertheless serve if such interest is fully disclosed in writing to all participants and if the participants agree that the neutral may serve, the Commission proposes to exclude such a neutral who is a Government employee. This qualification as to Government employees is necessary because of the prohibition of conflicts of interest found in other statutes for Federal employees.

Although the ADRA recognizes the right of the participants to choose outsiders as neutrals, ALJs or other staff members may also be neutrals in the ADR process. This provides an

alternative for participants who want to forgo the expense of using an outside neutral. Another reason for using ALJs might be if participants require a neutral familiar with the Commission's decisions, policies, and programs.

ALJs are the most likely class of the Commission's staff to be chosen as neutrals to decide disputes, but other staff members may be chosen for their expertise as facilitators/mediators. However, if a staff member served as a neutral in no event could that person thereafter serve in any other capacity in the proceeding.<sup>40</sup>

The Commission also proposes in Rule 604(c)(3) to provide that neutrals may be selected from rosters kept by the Federal Mediation and Conciliation Service, ACUS, and the American Arbitration Association, as well as any other source. Pursuant to proposed Rule 604(c)(2), neutrals would be selected by the participants and would serve at the will of the participants, unless the ADR agreement provides otherwise. When it is the desire of the participants to select an ALJ to act as the neutral, upon a request made to the Chief ALJ, that individual, if available, would be designated as the neutral in the particular proceeding. If the requested ALJ is not available, the participants would be informed and they could select another ALJ if they desired.

#### C. Arbitration

The ADRA establishes procedures for binding arbitration proceedings. Proposed Rule 605 incorporates the arbitration provisions as they appear in the ADRA, with a few modifications as discussed below. To the extent participants wish to use a different arbitration procedure, they are free to propose one, rather than using the procedure set forth in Rule 605.

##### 1. Applicability to Commission Proceedings

The Commission recognizes that arbitration may not be appropriate for many types of Commission proceedings given the number of parties typically involved and the nature of the issues. However, arbitration should be one of the dispute resolution tools that is available to parties and trial staff when considering ADR.

##### 2. Authorization

Proposed Rule 605(a) provides that the participants may at any time submit a proposal to use the binding arbitration

<sup>40</sup> This is consistent with the Commission's current settlement procedures. Under Rule 603, the settlement judge serves a single function as a mediator or facilitator and cannot be a decisionmaker or advisor in that proceeding.

provisions of Rule 605 to resolve all or part of any matter in controversy before the Commission. Proposed Rule 605(a)(2) would require that a proposal to use binding arbitration follow the procedures outlined in Rule 604(d). Proposed Rule 605(a)(3) would require that the proposal be submitted in writing and contain the information listed in Rule 604(e). Under proposed Rule 605(a)(4), the arbitration process could be monitored and terminated just as other ADR methods under Rules 604 (f) and (g). To ensure that arbitration is truly voluntary on all sides, proposed Rule 605(a)(5) provides that the Commission will not require any person to consent to an arbitration proposal as a condition of receiving a contract or benefit. Similarly, no company regulated by the Commission may impose such a condition. Proposed Rule 605(a)(5) further proposes to require that an arbitration proposal under Rule 605 have the express written consent of all parties to the dispute.

### 3. Arbitrator

Under new Rule 605(b), participants in an arbitration proceeding would be entitled to select the arbitrator. The particular procedure to be used in selecting an arbitrator is not provided; however, the arbitrator is required to meet the requirements of the neutral as described in new Rule 604(d). Rule 605(c) sets forth the arbitrator's duties, including conducting hearings, administering oaths, issuing subpoenas to compel attendance of witnesses and production of evidence at hearing. The arbitrator would be expressly authorized to make awards, *i.e.*, issue decisions.<sup>41</sup> As the Senate Report explains:

This section is intended to provide arbitrators with the appropriate authority and flexibility to conduct arbitral proceedings in an informal and efficient manner and to keep the arbitral proceedings from becoming, in essence, full-blown litigation proceedings. An arbitrator should not use the authority granted in this section to indulge in or permit excessive discovery. Instead, the arbitrator should make appropriate use of the authority provided in this section to gather the necessary materials and information to conduct a fair, effective and expeditious inquiry.

The section also limits arbitrators to the subpoena authority granted by the Arbitration Act and to the agency sponsoring the arbitral proceeding. This language is intended to ensure that the same practices and body of law apply to all arbitrations of disputes with federal agencies, whether initiated under the ADR subchapter in Title 5 or the Arbitration Act in Title 9. It is also intended to ensure that federal agencies do

not gain, as a consequence of this Act, any subpoena powers that they do not already possess.<sup>42</sup>

### 4. Rules of Conduct for Conducting Arbitration

Proposed Rule 605(d) incorporates the provisions in Section 579 of the ADRA that establish basic rules for the conduct of binding arbitration proceedings, including hearings. Rule 605(d)(1) provides that the arbitrator will set the time and place for the hearing and notify the participants. Proposed Rules 605(d)(2) and (3) provide for preparation of a record, if desired, and for presenting evidence. The rule would require the hearing to be conducted expeditiously and informally and would establish basic rights of the participants. Under proposed Rule 605(d)(3)(iv), the arbitrator may exclude evidence that is irrelevant, immaterial, unduly repetitious or privileged. According to the Senate Report, this common arbitral standard ensures informal and expeditious proceedings.<sup>43</sup> Proposed Rule 605(d)(4) would prohibit *ex parte* communications with the arbitrator, allowing the arbitrator to impose sanctions for a violation of this prohibition. Proposed Rule 605(d)(5) would require the arbitrator to issue an award within 30 days of the close of the hearing, unless the participants and arbitrator agree to a different schedule.

### 5. Arbitration Awards

The ADRA provides standards for issuing and appealing arbitral awards. The Commission proposes to incorporate those standards in new Rule 605(e). The award would be in writing and include a brief, informal discussion of the factual and legal basis for the award. The prevailing participants would file the award with the Commission and any other relevant agencies and serve all participants. The award would become final 30 days after it is served on all participants. However, the Commission, upon motion or otherwise, could extend this period for one additional 30-day period upon notice of the extension to all participants.

Proposed Rule 605(e)(3) provides that a final award will be binding on the participants.

### 6. Vacating an Award

As provided in the ADRA, the Commission proposes Rule 605(f) to provide procedures for the Commission to vacate an award. Proposed Rule 605(f)(1) permits any person to request,

within 10 days of the filing of an award under Rule 605(e), that the Commission vacate the award and requires that person to provide notice of the request to all participants. Responses to such a request must be filed within 10 days after the request is filed. Under proposed Rule 605(f)(2), the Commission, upon request or otherwise, may vacate an arbitration award before the award becomes final, and, to do so, must issue a written order to that effect. The Commission's review of an arbitration award would be based on the statutory standard that applies to the issues resolved, and depends, therefore, on whether the issues involve rate, certificate, or other matters in the Commission's jurisdiction. In proposed Rule 605(e), the Commission would adopt the ADRA's provision that the award need only discuss informally the factual and legal bases for the award. If the participants wish to require that an award include formal findings of fact and conclusions of law, they may do so by adopting a different standard.

Proposed Rule 605(f)(4) adopts the ADRA's provision for monetary relief. Thus, if the Commission vacates an arbitration award, a party to the arbitration proceeding may petition the Commission for an award of the attorney fees and expenses incurred in connection with the arbitration proceeding. The Commission must award the petitioning party those fees and expenses that would not have been incurred in the absence of the arbitration proceeding, unless the Commission finds that special circumstances make the award unjust.

As provided by the ADRA, proposed Rule 605(f)(6) establishes that a decision by the Commission to vacate an arbitration award is not subject to judicial review.

### D. Confidentiality

The ADRA contains extensive confidentiality provisions.<sup>44</sup> The Commission proposes to establish new Rule 606 regarding confidentiality in ADR proceedings. The confidentiality provisions set forth in Rule 606 would apply only to ADR proceedings established under proposed new Rules 604 and 605, and are necessary for the neutral in dispute resolution proceedings to remain effective. The participants should feel free to be forthcoming and frank without fear that their statements may later be used against them. As well, a neutral should be protected from being required to divulge such information.

<sup>41</sup> The power to issue awards does not include the authority to issue licenses and certificates.

<sup>42</sup> S. Rep. No. 543, 101st Cong., 2d Sess. at 13 (1990).

<sup>43</sup> *Id.*

<sup>44</sup> 5 U.S.C. 574.

The Commission's proposed Rule 606 incorporates most of the confidentiality provisions for neutrals and participants that are found in the ADRA. Under proposed Rule 606(a), confidentiality must be maintained by a neutral unless: (1) All participants in the ADR proceeding and the neutral consent in writing to the disclosure; (2) the communication has already been made public; (3) the communication is required by statute to be made public; or (4) a court determines, after a balancing of considerations, that disclosure is necessary to prevent a manifest injustice, to help establish a violation of law, or to prevent harm to the public health or safety.

Under proposed Rule 606(b), a participant in the ADR proceeding must not disclose information concerning any dispute resolution communication unless, pursuant to five of the seven exceptions set out in the ADRA: (1) All participants consent in writing; (2) the communication has already been made public; (3) the communication is required by statute to be made public; (4) a court determines, after balancing considerations, that disclosure is necessary to prevent manifest injustice, establish a violation of law, or prevent harm to the public health or safety; or (5) the communication is relevant to determining the existence or meaning or the enforcement of an agreement or award resulting from the proceeding. The Commission does not propose to include the remaining two exceptions, which permit a participant to disclose a communication that was prepared by the party seeking disclosure or that was available to all parties to the ADR proceeding, because the exceptions could lead to the disclosure of material that may need protection.

Under proposed Rule 606(c), any communication disclosed in violation of this section would not be admissible in any proceeding relating to the issues in controversy. Proposed Rule 606(d) provides that the participants may agree to alternative confidentiality procedures for disclosure by a neutral, but should inform the neutral of any modifications prior to the commencement of the ADR procedure. If the neutral is not so informed, the provisions of proposed Rule 606(a) would apply. Under proposed Rule 606(e), the participants must be notified of a demand for disclosure, whether by discovery or other legal process. Proposed Rule 606(f) through (i) adopt the remaining provisions of the ADRA, including the provision that nothing in the section would prevent discovery or admissibility of evidence that is otherwise discoverable, merely because

the evidence was presented in the course of a dispute resolution proceeding.

#### *E. Representation of Parties*

The ADRA requires each agency to consider whether to allow non-attorney representation in ADR proceedings, and, if non-attorneys are allowed, to develop a policy on the disqualification of non-attorney representatives when warranted.

The Commission has already incorporated such policies in its rules and those existing rules would apply to ADR proceedings as well. Existing Rule 2101 permits a participant to appear in a proceeding in person or by an attorney or other qualified representative, and existing Rule 2102 provides for suspension or disqualification (temporary or permanent) of representatives when necessary.

#### *V. Settlement Rules*

The settlement procedures in Rules 601 through 603 generally work well and, under the framework established by the rules, various ADR methods are now used to great advantage to bring Commission proceedings to more efficient and effective outcomes. Nevertheless, the NOI invited comments on whether the settlement regulations in general should be revised and, if so, in what manner. Specific comments were requested on whether changes are necessary to accommodate the filing and processing of omnibus settlements. Also, comments were requested on whether to permit an ALJ to certify a contested settlement on less than unanimous concurrence of the parties in a motion to omit an initial decision.

As discussed previously in this notice, the commenters responding to the NOI uniformly support in general the current settlement procedures as a successful method for resolving countless controversies in numerous and varied proceedings. They support the use of the ADR methods promoted by the ADRA as an additional tool to complement the tools already available under the rules providing for settlement conferences, settlement judge proceedings, and the submission and review of settlements.

Although the commenters request that any changes that may be proposed in this notice to existing rules or policy not in any way diminish the effectiveness of the settlement process, they urge that the Commission should consider a number of changes that would improve and expedite that process. For the most part, they propose changes to certain procedures in Rule 602 that govern the submission and review of settlements

and, specifically, to the certification process in subparts (g) and (h) for the transmission from the ALJ to the Commission of uncontested or contested settlements.

Based on the comments and a reexamination of the settlement rules, the Commission proposes to adopt certain of the changes requested by the commenters and not to adopt other requested changes, as more fully discussed below. The Commission invites comments on its proposals and any information that would be useful and appropriate in assisting in the formulation of rules to improve the settlement process.

#### *A. Omnibus Settlements*

Rules 602 (a) and (b) now provide that any participant in a proceeding may submit a written offer of settlement in any proceeding pending before the Commission or set for hearing. The Secretary transmits the offer either to the ALJ, if the offer is filed after a proceeding is set for hearing and before the ALJ has certified the record to the Commission, or to the Commission, as appropriate.

Omnibus settlements may cover multiple proceedings, as well as multiple parties, involving pipelines, electric utilities, or other regulated entities. These settlements have grown in importance in recent years, in particular for pipelines, as parties attempt to resolve the numerous issues that arise in the many proceedings generated by the company's shift to a more competitive environment. The many and diverse parties recognize that the resolution of an issue will be affected by the resolution of other issues and, as a result, they seek to settle the interrelated proceedings in a single settlement.

As the commenters acknowledge, parties to multiple proceedings that wish to resolve overlapping issues through the filing of a single, omnibus settlement are able to do so under the existing regulations. Parties are free to include any number of proceedings and issues in an offer of settlement submitted under Rules 602 (a) and (b). Settlement discussions to develop omnibus settlements involving multiple proceedings may be readily established by the Commission, the ALJs, or upon motion by any participant under Rule 601 (which provides for informal conferences) or under the more structured settlement judge procedures of Rule 603. The discussions may involve multiple proceedings pending before ALJs, the Commission, or both. Under the rules, the Commission, the ALJs, or the participants in any

underlying proceeding may seek the appropriate procedural relief to facilitate discussion, including stay of any of the proceedings during the course of the discussion. The Commission believes that, as modified earlier in this NOPR to include discussions for purposes of the use of ADR techniques, these rules are sufficiently flexible to accommodate and facilitate settlement discussions in any situation, including the discussion of possible omnibus settlements involving proceedings before the Commission and the ALJs.

However, the Commission agrees in part with the commenters that amendments to the regulations would be useful and appropriate specifically to provide participants the opportunity to consolidate proceedings in settlements filed at the Commission. Rule 503(a) provides the Chief ALJ with the authority, on motion or otherwise, to order multiple proceedings pending before ALJs consolidated for hearing. Under this authority, the Chief ALJ also has been able to consolidate multiple proceedings if they are included in a settlement and to assign the settlement to a single ALJ for the efficient and effective treatment of the settlement.

The Commission proposes to codify current practice and amend Rule 503(a) by adding that the Chief ALJ may order multiple proceedings that are pending before ALJs to be consolidated for settlement, as well as hearing, on any or all matters in issue. By specifically designating settlements as a basis for consolidation of multiple proceedings pending before ALJs, the proposed amendment to Rule 503 recognizes the importance of omnibus settlements as an alternative to hearings and may encourage the participants or the ALJs to pursue alternatives.

There is no provision in the regulations for the consolidation of multiple proceedings that are pending in part before ALJs and in part before the Commission for disposition of an offer of settlement. Unless otherwise delegated in its rules, the Commission has the authority, on its own or upon the filing of a motion with the Commission, to take appropriate action to waive its rules, consolidate proceedings, or any other action permitted by law.<sup>45</sup> If a settlement is filed that includes multiple proceedings pending in part before one or more ALJs or that involves issues in common with other settlements pending before one or more ALJs, it is the Commission's current practice to consider any motion to waive its rules as necessary to permit

consolidation of all the proceedings for the Commission to evaluate the settlement.<sup>46</sup>

The Commission proposes to codify its current practice by amending the procedures in Rule 602(b) for the submission of offers of settlement to provide specifically for requests to be filed with the Commission for consolidation or other appropriate procedural relief to enable proceedings pending before ALJs to be transmitted to the Commission for consideration in an omnibus settlement together with proceedings pending before the Commission. The amendment would add new paragraph (b)(3) to permit any participant in a proceeding covered by an offer of settlement submitted under (b)(1) to file a consolidation request when the settlement covers multiple proceedings pending in part before the Commission and in part before one or more ALJs. As indicated, the authority of the ALJ and the Commission to consolidate multiple proceedings exclusively under their respective jurisdictions for review in an omnibus settlement is established, respectively, in Rules 503(a), 101(e), and 212.

In keeping with current practice, under the proposed rule the Commission would determine whether to have all the related proceedings brought together, regardless of where they are pending, to consider an omnibus settlement. To consolidate multiple proceedings in such situations in the past, the Commission has waived Rule 602's certification requirements and ordered certification. The Commission has found that its evaluation of the settlement at that time was necessary to ensure consistent treatment of the underlying proceedings and to prevent the limitations on an ALJ's ability to certify settlements from frustrating the Commission's consideration of interrelated proceedings, including interrelated settlements, that are pending before the ALJs.<sup>47</sup> The proposed rule gives the Commission the discretion to deny the request to consolidate and waive the certification requirements. If necessary, the Commission can order a hearing in any underlying docket, including a docket that is pending before an ALJ. Any expediency to be gained by this consolidation procedure may not outweigh the need for adherence to the

procedural rules or the development of a record on the merits.

The Commission believes that codification of its current practice is necessary and appropriate to clarify these procedures and establish their availability. Participants may be encouraged to seek settlements of interrelated issues that are involved in proceedings both before ALJs and the Commission without concern for the different jurisdictions.

#### *B. Rule 602(g): Uncontested Offers of Settlement and Adequacy of the Record*

Rule 602(g) provides for the certification to the Commission of uncontested settlements filed with an ALJ. If an offer is uncontested, the ALJ is required under Rule 602(g)(1) to certify to the Commission the offer of settlement with the hearing record and any related pleadings. Under the standard set out in Rule 602(g)(3), the Commission may approve an uncontested offer "upon a finding that the settlement appears to be fair and reasonable and in the public interest."

It is well established that the agreement of the parties alone is not necessarily a sufficient basis upon which the Commission may approve an uncontested settlement. Whether disregarding or relying on the settlement, the Commission must fully consider and justify its action. The court in *Tejas Power Co. v. FERC*, (Tejas) held that the Commission is required to make an independent determination that the settlement is in the public interest.<sup>48</sup> On some issues, an exercise of the Commission's independent review may be required even though the parties may not want to develop a record. In these circumstances, the Commission is entitled to require the development of an adequate record before it can determine whether an uncontested settlement is in the public interest.

As a general proposition, the Commission has in the past and expects in the future to approve most uncontested settlements as they are presented by the parties and the trial staff. It is the Commission's practice to review uncontested settlements as a whole in determining whether they are in the public interest and to approve them as presented where important objectives are to be achieved. There are

<sup>45</sup> *El Paso Natural Gas Co.*, 53 FERC ¶ 61,014; *clarified*, 53 FERC ¶ 61,187 (1990); *Transcontinental Gas Pipe Line Corp.*, 53 FERC ¶ 61,301 (1990), *order on reh'g*, 54 FERC ¶ 61,072 (1991).

<sup>47</sup> *El Paso Natural Gas Co.*, 53 FERC ¶ 61,014, at 61,055 (1990); *Transcontinental Gas Pipe Line Corp.*, 53 FERC ¶ 61,301, at 62,123 (1990).

<sup>48</sup> *Tejas Power Co. v. FERC*, 908 F.2d 998 (D.C. Cir. 1990). Specifically, the court found that the issues in that rate proceeding required the Commission to examine the impact of the settlement and collect evidence that the consumers' interest would be served by the agreement, that the parties had adequate bargaining power to produce an equitable agreement, and that the agreement's terms are acceptable under the Commission's requirements.

<sup>46</sup> 18 CFR 385.101(e) and 385.212.

circumstances, however, when the Commission may be seeking to implement specific policies in particular types of cases. In these circumstances, the Commission may direct the parties to make a showing beyond what would normally accompany an uncontested settlement. If changes in the terms of the settlement are ordered when the Commission approves the settlement, it is to conform the settlement to Commission policy to ensure that the settlement is fair, reasonable, and in the public interest.

#### C. Rule 602(h): Contested Settlements

Rule 602(h) provides for processing settlements that are contested in whole or in part by any participant. Rule 602(h)(1) governs the Commission's evaluation and decision of contested settlements. Rule 602(h)(2) sets out the standards that govern the ALJ's evaluation of contested settlements in proceedings before the ALJ and provides for the certification of the settlement to the Commission for a decision on the merits of the contested issues.

Under Rule 602(h)(1), the Commission may decide the merits of the issues in a contested settlement if the record contains substantial evidence upon which to base a reasoned decision or the Commission determines there is no genuine issue of material fact. Under Rule 602(h)(2), a settlement that is contested by a party and that is before an ALJ may be certified to the Commission for a merits decision if, under Rule 602(h)(2)(ii), no genuine issue of material fact exists. If genuine issues of material fact exist, the ALJ may still certify the contested settlement but only if the following three conditions specified in Rule 602(h)(2)(iii) are met: (1) the parties concur on a motion for omission of the initial decision, (2) the presiding officer determines that the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues, and (3) the parties have an opportunity to avail themselves of their rights with respect to the presentation of evidence and cross-examination of opposing witnesses.

##### 1. Severance of Parties or Issues

The rules permit either the Commission or the ALJ, as appropriate, to sever contested issues from a settlement and resolve them separately.<sup>49</sup> The uncontested issues

may be considered under the expedited procedures for Commission review of uncontested settlements, while the contested issues proceed with further review on the merits. In establishing the settlement rules in 1979, the Commission encouraged the parties to a settlement to indicate whether parts of the settlement are severable and to advise the ALJ or the Commission to permit a prompt decision on the uncontested parts of the settlement.<sup>50</sup> Although the rules speak of severing issues, the Commission has also construed the rules to permit contesting parties to be severed and given a separate hearing, while approving the settlement for consenting parties.<sup>51</sup>

The determination whether to sever a party under the regulations is made, as are other decisions under the regulations, on a case-by-case basis. The practice of severing contesting parties from settlements has been adopted when such action preserved the benefits of the settlement for the consenting parties while affording contesting parties the opportunity to establish a record upon which their rates could be based. When certain essential services, such as transportation or storage, are at issue, the Commission has refused to sever parties. This is based on the view that it is unduly discriminatory to provide service to some on different terms, or to withhold service because some parties choose to exercise their rights to present their positions to the Commission for decision.<sup>52</sup>

When parties cannot be severed, the Commission has pointed out the many options available under its rules and policies that might allow certification of the contested settlement.<sup>53</sup> In such circumstances, the ALJ can examine the record under the guidelines previously discussed in this NOPR to determine whether genuine issues of material fact are contained in the settlement and, if so, whether the written record was sufficient to resolve the issues. Another option is to sever the disputed issues of material fact for a decision on the merits if the parties would continue to support the settlement. Also, the ALJ could hold a brief, limited hearing to develop

enough of a record on certain issues to permit certification.

While some commenters have urged otherwise, the Commission believes that codification in the rules of the cases in which it has approved, or not approved, motions to sever parties would be unnecessary, cumbersome, and unduly restrictive. The Commission's policy has been established by case law in these areas. Because the situations tend to be fact specific, this case-by-case approach is preferred.

Additionally, codification of the precise language to protect a settlement from severance of any party or issue is unnecessary and unduly restrictive. Parties may prevent severance of issues by expressly making the settlement a non-severable package. If an issue is contested in those settlements, the Commission may consider whether to approve the settlement as to all parties that do not contest that issue and to require a decision on the merits on that issue as to the contesting parties.<sup>54</sup> In some cases, settlements may provide that the terms are to apply only to those parties electing to be bound.<sup>55</sup>

As indicated, the existing rules do not provide for the severance of contesting parties, but only for the severance of contested issues. Thus, the existing rules do not reflect existing practice. The Commission proposes to modify those provisions to permit the ALJ or the Commission to sever contesting parties as well. As provided in the rules, the uncontested portions would be decided in accordance with the procedures for uncontested settlements under Rule 602(g). Accordingly, Rules 602(h)(1)(ii) and (iii) and Rule 602(h)(2)(iv) would be changed by adding the phrase "contesting parties or" before the discussion beginning with "contested issues".

##### 2. Rule 602(h)(2): Certification of Contested Settlements

Rule 602(h)(2) sets out the procedures by which the ALJ may certify a contested settlement to the Commission. The Commission does not propose to change the general framework it has established in Rule 602(h)(2). As discussed below under the various certification requirements, the ALJ

<sup>49</sup> FERC Stats. & Regs. Preambles, 1977-1981 ¶ 30,061, at 30,433.

<sup>50</sup> *United Gas Pipeline Co.*, 22 FERC ¶ 61,094; *reh'g denied*, 23 FERC ¶ 61,101 (1983); *approved sub nom.*, *United Municipal Distributors Group v. FERC*, 732 F.2d 202 (D.C. Cir. 1984); *reaff'd*, *Arctic Slope Regional Corp. v. FERC*, 832 F.2d 158 (D.C. Cir. 1987).

<sup>51</sup> *Tennessee Gas Pipeline Co.*, 57 FERC ¶ 61,360 (1991), *reh'g*, 59 FERC ¶ 61,045 (1992).

<sup>52</sup> *Williams Natural Gas Co.*, 53 FERC ¶ 61,060 (1990), 53 FERC ¶ 61,231 (1990).

<sup>53</sup> *United Municipal Distributors Group v. FERC*, 732 F.2d 202, 208 (D.C. Cir. 1984).

<sup>54</sup> However, the Commission has imposed limits on the ability of a regulated company to coerce parties into waiving their statutory rehearing and appeal rights in a settlement by denying them certain services if they seek rehearing or judicial review of an order accepting a settlement. *Tennessee Gas Pipeline Co.*, 57 FERC ¶ 61,360, at 62,167-68 (1991), *order on reh'g*, 59 FERC ¶ 61,045, at 61,172-74 (1992); *ANR Pipeline Co.*, 59 FERC ¶ 61,347 (1992).

<sup>49</sup> Rule 602(h)(1)(iii) and Rule 602(h)(2)(iv). See, e.g., *Tennessee Gas Pipeline Co.*, 31 FERC ¶ 61,308 (1985), in which the Commission approved a settlement in the public interest on issues where the record was sufficient, but severed an issue for later decision where the record was insufficient.

fulfills an important function in transmitting to the Commission a settlement that, if it raises material issues, contains an adequate record on which the Commission can then base a decision on the merits.

a. *Genuine Issue of Material Fact.* Under paragraph (ii) of Rule 602(h)(2), the ALJ determines whether a settlement that is contested by any participant contains a genuine issue of material fact. If the settlement does not, the ALJ may certify the settlement directly to the Commission. If the settlement contains a genuine issue of material fact, the ALJ may certify the settlement only if the three conditions under paragraph (iii) are met.

The Commission has recognized the potential roadblocks to the expedited resolution of settlements created by claims of materiality of issues in a settlement before an ALJ. It has never been Commission policy to provide a forum for litigation of each and every contested issue at the expense of another reasonable resolution of disputed issues. Not every fact is material, and the ALJ should let a settlement promptly go to the Commission if no material facts are found. The Commission has provided guidance for narrowing the scope of contested issues and preventing a hearing from covering unnecessarily broad issues by requiring objections raised to a settlement to be closely scrutinized.<sup>56</sup>

However, the Commission believes that measures could be taken to improve the ALJ's ability to scrutinize contested issues for their materiality and factual content. In this regard, the Commission proposes to modify Rule 602(f) by adding the requirement that contesting parties submit affidavits with their initial comments detailing any genuine issues of material fact that they contend exist. Reply comments, including responding affidavits would also be allowed. The ALJs and the Commission will thus have necessary information concerning materiality at the outset of the settlement review process. This may avoid the delays created later in the process when the ALJ or the Commission may be required to have further proceedings to sort through claims and determine materiality of those claims.

To ensure the completeness of the information to be provided by contesting parties in the affidavits, the parties would include specific references to documents, testimony, or other items included in the offer of

settlement as required under Rule 602(c)(iii) that are related to and support the claims of the contesting party that there are genuine issues of material fact in the settlement. This requirement would also extend to documents, testimony, or other matters that may not have been included in the settlement, but that are relevant to support the claims of the contesting party.

This change in the regulations makes the consideration of a contested settlement comparable to the practice in federal court for ruling on motions for summary judgment. Under Rule 56(e) of the Federal Rules of Civil Procedure, an affidavit must identify certain facts showing that a genuine issue of material fact exists for trial.<sup>57</sup>

The Commission does not propose to modify subparagraph (ii) of Rule 602(h)(2) to narrow or limit by rule the definition of what constitutes a genuine issue of material fact. The determination of what is a material fact depends on what is at issue in the case. The definition is sufficiently flexible to permit the ALJ to identify a material fact based on the substantive issues in the case and to determine if the record is adequate. The ALJ also has the ability to develop the record further, if it is inadequate, and then to certify the settlement to the Commission. Rather than amend the standard under which the ALJs currently operate in determining the genuineness of any disputed facts and the sufficiency of a record, the Commission believes that its proposal to amend Rule 602(f) to require a strong showing by contesting parties is a sufficient barrier to superficial claims of material fact that can block certification of a settlement to the Commission.

Contrary to the request of some commenters, the Commission does not propose to modify the rule to require the ALJ to issue an initial decision in all settlements. This essentially would eliminate the certification process and the Commission's procedures for ruling on all settlements either under the public interest standard or, if contested, on the merits. Under Section 557(b) of the Administrative Procedure Act and Rule 708, an ALJ is only required to issue an initial decision in those proceedings in which the ALJ presided over the taking of evidence, and that may be waived under Rule 710 upon motion of the parties. To delay the Commission's review of all settlements until the parties seek review on exceptions of a mandatory initial decision not only is inconsistent with the APA, it establishes an additional

roadblock to the Commission's ultimate review of settlements.

\*b. *Rule 602(h)(2)(iii): Three Conditions for Certification if Genuine Issues of Material Fact Exist.* Under current Rule 602(h)(2)(iii), the ALJ may certify an offer of settlement or part of any offer of settlement even if the settlement contains genuine issues of material fact. In these circumstances, the ALJ is entitled to certify an offer that is contested by a party if all of the following conditions, contained in subparts (A), (B), and (C), are met:

(A) The parties concur on a motion for omission of the initial decision as provided in Rule 710;

(B) The presiding officer determines that the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues; and

(C) The parties have an opportunity to avail themselves of their rights with respect to the presentation of evidence and cross-examination of opposing witnesses.

If any one of these conditions is not present, the judge may direct further procedures as deemed appropriate, including certification of the settlement at a later time if the conditions are then met.

Modifications to conditions (A) and (C) are necessary and appropriate. The barriers to certification by the ALJ under the rules are at times formidable. The ALJs, under Rule 602(h)(2), have less discretion than the Commission in reviewing offers of settlement. These limitations on the ALJ's ability to certify settlements can frustrate the Commission's ability to review the contested settlements on the merits. As discussed previously, the Commission in particular cases has waived the certification conditions to permit immediate transfer of a settlement, or parts of a settlement, to the Commission.<sup>58</sup> By refusing to agree to a waiver request, a single party can delay a settlement and prevent the Commission's review on the merits until an initial decision issues, even though the settlement has broad-based support and there exists a sufficient record on the disputed issues of fact. Nevertheless, unless all parties agree or the Commission otherwise waives the initial decision under Rule 710, the settlement cannot be certified to the

<sup>56</sup> Williams Natural Gas Co., 53 FERC ¶ 61,060, at 61,187 and 53 FERC ¶ 61,231, at 61,966-67 (1990).

<sup>57</sup> Fed. R. Civ. P. 56(e).

<sup>58</sup> Williams Natural Gas Co., 53 FERC ¶ 61,231, at 61,967 (1990); El Paso Natural Gas Co., 53 FERC ¶ 61,014, at 61,055 (1990).

Commission without the initial decision.<sup>59</sup>

Condition (C) allows a single party to insist on cross-examination of all opposing witnesses or, simply, to present additional evidence. Again, this could slow or stall the certification of the settlement, even though the parties have presented evidence and the ALJ believes the record is sufficient for the Commission to reach a decision.

Conditions (A), (B), and (C) in paragraph (iii) of Rule 602(h)(2) were designed to ensure that, in providing the ALJ with the authority to certify a contested settlement or a portion of a settlement, a sufficiently developed record existed on which a reasoned decision could be based.<sup>60</sup> As long as there is substantial evidence in the record for a decision by the Commission on the contested issues and each of the participants has been afforded an opportunity to be heard, no further proceedings before the ALJ are necessary and the ALJ is permitted by the rules to certify the settlement to the Commission.<sup>61</sup>

In establishing these rules, the Commission intended to reduce the length of time required for processing settlements to encourage participants in proceedings to seek the benefits of the settlement process for the expeditious resolution of contested issues.

Under condition (B), the ALJ may not certify a contested settlement unless the ALJ determines that the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues. The Commission believes that this condition should be the core of the ALJ's decision to certify a contested settlement. As noted, this is consistent with the Commission's intention in establishing the certification requirements. Moreover, it conforms to Rule 602(h)(1)(i), requiring that the Commission may decide the merits of any contested issues in a settlement before it for evaluation if the record contains substantial evidence or else there is no genuine issue of material fact.

Thus, if there are genuine issues of material fact and the record contains substantial evidence to allow for the decision on the merits, certification of the settlement should be permitted at the ALJ's discretion.

With this background in mind, the Commission proposes to make the

following changes to conditions (A) and (C). The Commission proposes to modify the regulations to permit the ALJ to certify a settlement if there is less than unanimous concurrence of the parties under condition (A) to a motion filed under Rule 710 for omission of the initial decision. To accomplish this, the Commission proposes to amend both condition (A) and Rule 710 to delegate to the ALJ the authority to determine that, if a motion filed under Rule 710 has less than unanimous concurrence, omission of the initial decision is appropriate to the same extent the Commission is able to make that determination under Rule 710. The Commission believes that delegating authority to the ALJ to dispose of the Rule 710 motion when omission of the initial decision is requested pursuant to the certification requirement in condition (A) of Rule 602(h)(2)(iii) will streamline the certification process.

In reaching its determination, the Commission relies on a functional test in which it examines the significance of the issues raised by the settlement, the substantial record evidence, and the importance of a prompt Commission decision.<sup>62</sup> The Commission proposes that the same requirements and considerations govern the ALJ.

The Commission has concluded that condition (C) is subsumed by condition (B) and proposes to eliminate condition (C) entirely. This is consistent with authority delegated to the ALJ when the Commission promulgated condition (C) and with Commission practice and policy concerning the use of cross-examination. In Order No. 32-A, the Commission denied that condition (C) requires each party to a proceeding to have the opportunity to present evidence and cross-examine opposing witnesses. Rather,

the rule assures only the opportunity for all parties to avail themselves of such rights as they may have to present evidence and to cross-examine opposing witnesses. The rule leaves to the presiding officer, based on the nature of the contested issues and the state of the record, to determine whether due process requires the presentation of evidence and cross-examination prior to certification for Commission resolution of a contested settlement. The opportunity to present evidence and to cross-examine is not always a matter of right. It is for the presiding officer to apply the law in deciding whether certification is appropriate. This rule does not provide any greater rights to those contesting a settlement than they had previously.<sup>63</sup>

In considering the scope of an ALJ's authority to consider a cross-

examination request pursuant to condition (C), the Commission has stated that its rules permit cross-examination only as necessary to assure true and full disclosure of the facts.<sup>64</sup> If the record is developed, the ALJ may deny a request for cross-examination.<sup>65</sup> As the Commission stated, answering written testimony generally will be sufficient to adequately ventilate the issues. If not, the ALJ could ensure that the record is adequately developed by according the participants the opportunity to put their views in the record. In these circumstances, condition (C) serves no useful purpose in the certification process. Rather, the due process considerations that it covers are subsumed in condition (B), inasmuch as the ALJ, in determining whether the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues, must conclude that all participants have had the opportunity to make their views known.

#### D. Deadlines

The Commission does not propose to adopt specific deadlines to govern the determinations to be made either by the Commission or the ALJ under Rules 602(g) and (h). Additional measures have been taken in this order to streamline the process further by giving the ALJ the discretion to remove certain roadblocks to certifying a contested settlement to the Commission on the merits. Neither the ALJ nor the Commission should be bound by the restrictions of deadlines, which may impede the ability to ensure the adequacy of the record or the issuance of an appropriate decision.

#### VI. Written Comment Procedure

The Commission invites all interested persons to submit written data, views, and other information concerning the proposals in this NOPR. All comments in response to this NOPR should be submitted to the Secretary of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, and should refer to Docket No. RM91-12-000. An original and fourteen copies should be filed with the Commission February 2, 1995. Commenters are urged to double space their comments and to provide a heading for each issue. Written submissions will be placed in the Commission's public files and will be available for inspection during regular

<sup>59</sup> Williams Natural Gas Co., 53 FERC ¶61,060, at 61,185, order on reconsideration, 53 FERC ¶61,231, at 61,967 (1990).

<sup>60</sup> Order No. 32, FERC Stats. & Regs. Preambles 1977-1981 ¶30,062, at 30,431-32.

<sup>61</sup> *Id.* at 30,435-36.

<sup>62</sup> *Id.*

<sup>63</sup> 8 FERC ¶61,160, at 61,603-04 (1979).

<sup>64</sup> Williams Natural Gas Co., 53 FERC ¶61,231, at 61,966-67 (1990).

<sup>65</sup> 18 CFR 385.505.

business hours in the Commission's Public Reference Room, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

## VII. Administrative Findings

### A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)<sup>66</sup> generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The Commission is not required to make an analysis if a proposed rule will not have such an impact.<sup>67</sup>

Pursuant to section 605(b) of the RFA, the Commission certifies that the proposed amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities.

### B. Environmental Review

The Commission is not preparing an environmental assessment or environmental impact statement in this proceeding because the proposed amendments are procedural only, changing only the Commission's rules of practice and procedure, and therefore have no significant effect on the human environment.<sup>68</sup>

### C. Information Collection Requirements

Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rules.<sup>69</sup> However, this rule contains no new information collection requirements in Part 385 and therefore is not subject to OMB approval.

### List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

Lois D. Cashell,  
Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 385, Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

## PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for Part 385 is revised to read as follows:

Authority: 5 U.S.C. 551-557; 15 U.S.C. 717-717z, 3301-3432; 16 U.S.C. 791a-825r, 2601-2645; 31 U.S.C. 9701; 42 U.S.C. 7101-7352; 49 U.S.C. 60502; 49 App. U.S.C. 1-85.

2. In § 385.503, paragraph (a) is revised to read as follows:

**§ 385.503 Consolidation, severance and extension of close-of-record date by Chief Administrative Law Judge (Rule 503).**

(a) The Chief Administrative Law Judge may, on motion or otherwise, order proceedings pending under this subpart consolidated for hearing on, or settlement of, any or all matters in issue in the proceedings, or order the severance of proceedings or issues in a proceeding. The order may be appealed to the Commission pursuant to Rule 715.

3. In § 385.504, paragraph (b)(7) is revised to read as follows:

**§ 385.504 Duties and powers of presiding officers (Rule 504).**

(b) Powers. \* \* \*

(7) Hold conferences of the participants, as provided in Subpart F of this part, including for the purpose of considering the use of alternative dispute resolution procedures;

4. In § 385.601, paragraph (a) is revised to read as follows:

**§ 385.601 Conferences (Rule 601).**

(a) *Convening.* The Commission or other decisional authority, upon motion or otherwise, may convene a conference of the participants in a proceeding at any time for any purpose related to the conduct or disposition of the proceeding, including submission and consideration of offers of settlement or the use of alternative dispute resolution procedures.

5. In § 385.602, paragraphs (b)(3) and (f)(4) are added and paragraphs (h)(1)(ii) introductory text, (h)(1)(iii), (h)(2)(iv) are revised to read as follows:

**§ 385.602 Submission of settlement offers (Rule 602).**

(b) Submission of offer. \* \* \*

(3) If an offer of settlement pertains to multiple proceedings that are in part pending before the Commission and in part set for hearing, any participant may by motion request the Commission to consolidate the multiple proceedings

and to provide any other appropriate procedural relief for purposes of disposition of the settlement.

(f) Comments. \* \* \*

(4) Any comment that contests an offer of settlement by alleging a dispute as to a genuine issue of material fact must include an affidavit detailing any genuine issue of material fact by specific reference to documents, testimony, or other items included in the offer of settlement, or items not included in the settlement, that are relevant to support the claim. Reply comments may include responding affidavits.

(h) Contested offers of settlement.

(1) \* \* \*

(ii) If the Commission finds that the record lacks substantial evidence or that the contesting parties or contested issues can not be severed from the offer of settlement, the Commission will:

(iii) If contesting parties or contested issues are severable, the contesting parties or uncontested portions may be severed. The uncontested portions will be decided in accordance with paragraph (g) of this section.

(2) \* \* \*

(iii) Any offer of settlement or part of any offer of settlement may be certified to the Commission, if:

(A) The parties concur on a motion for omission of the initial decision as provided in Rule 710, or, if all parties do not concur in the motion, the presiding officer determines that omission of the initial decision is appropriate under Rule 710(d), and

(B) The presiding officer determines that the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits of the contested issues.

(iv) If any contesting parties or contested issues are severable, the uncontested portions of the settlement may be certified immediately by the presiding officer to the Commission for decision, as provided in paragraph (g) of this section.

6. In Subpart F, §§ 385.604 through 385.606 are added to read as follows:

**§ 385.604 Alternative means of dispute resolution (Rule 604).**

(a) *Applicability.* (1) Participants may, subject to the limitations of paragraph (a)(2) of this section, use alternative means of dispute resolution to resolve all or part of any pending matter if the participants agree. The alternative means of dispute resolution authorized under Subpart F of this part will be

<sup>66</sup> 5 U.S.C. 601-612.

<sup>67</sup> 5 U.S.C. 605(b).

<sup>68</sup> Section 380.4(a)(2)(ii) of the Commission's regulations categorically exempts from environmental review Commission proposals for promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of the regulations being amended. See 18 CFR 380.4(a)(2)(ii).

<sup>69</sup> 5 CFR 1320.13.

voluntary procedures that supplement rather than limit other available dispute resolution techniques.

(2) Except as provided in paragraph (a)(3) of this section, the decisional authority will not consent to use of an alternative dispute resolution proceeding if:

(i) A definitive or authoritative resolution of the matter is required for precedential value;

(ii) The matter involves or may bear upon significant questions of policy that require additional procedures before a final resolution may be made, and the proceeding would not likely serve to develop a recommended policy;

(iii) Maintaining established policies is of special importance;

(iv) The matter significantly affects persons or organizations who are not parties to the proceeding;

(v) A full public record of the proceeding is important, and a dispute resolution proceeding cannot provide a record; or

(vi) The Commission must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Commission's fulfilling that requirement.

(3) If one or more of the factors outlined in paragraph (a)(2) of this section is present, alternative dispute resolution may nevertheless be used if the alternative dispute resolution proceeding can be structured to avoid the identified factor or if other concerns significantly outweigh the identified factor.

(4) A determination to use or not to use a dispute resolution proceeding under Subpart F of this part is not subject to judicial review.

(5) Settlement agreements reached through the use of alternative dispute resolution pursuant to Subpart F of this part will be subject to the provisions of Rule 602, unless the decisional authority, upon motion or otherwise, orders a different procedure.

(b) *Definitions.* For the purposes of Subpart F of this part:

(1) *Alternative means of dispute resolution* means any procedure that is used, in lieu of an adjudication, to resolve issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, or any combination thereof;

(2) *Award* means any decision by an arbitrator resolving the issues in controversy;

(3) *Dispute resolution communication* means any oral or written

communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes or work product of the neutral, parties or non-party participant. A written agreement to enter into a dispute resolution proceeding, or a final written agreement or arbitral award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication;

(4) *Dispute resolution proceeding* means any alternative means of dispute resolution that is used to resolve an issue in controversy in which a neutral may be appointed and specified parties participate;

(5) *In confidence* means information is provided:

(i) With the expressed intent of the source that it not be disclosed, or

(ii) Under circumstances that create a reasonable expectation on behalf of the source that the information will not be disclosed;

(6) *Issue in controversy* means an issue which is or is anticipated to be material to a decision in a proceeding before the Commission and which is the subject of disagreement between participants who would be substantially affected by the decision or between the Commission and any such participants;

(7) *Neutral* means an individual who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy;

(8) *Participants* in a dispute resolution proceeding that is used to resolve an issue in controversy in a proceeding involving an application for a license or exemption to construct, operate, and maintain a hydroelectric project pursuant to the Federal Power Act or the Public Utility Regulatory Policies Act shall include such state and federal agencies and Indian tribes as have statutory roles or a direct interest in such hydroelectric proceedings.

(c) *Neutrals.* (1) A neutral may be a permanent or temporary officer or employee of the Federal Government (including an administrative law judge), or any other individual who is acceptable to the participants to a dispute resolution proceeding. A neutral must have no official, financial, or personal conflict of interest with respect to the issues in controversy, except that a neutral who is not a government employee may serve if the interest is fully disclosed in writing to all participants and all participants agree.

(2) A neutral serves at the will of the participants, unless otherwise provided.

(3) Neutrals may be selected from among the Commission's administrative law judges or other employees, from rosters kept by the Federal Mediation

and Conciliation Service, the Administrative Conference of the United States, the American Arbitration Association, or from any other source.

(d) *Submission of proposal to use alternative means of dispute resolution.*

(1) The participants may at any time submit a written proposal to use alternative means of dispute resolution to resolve all or part of any matter in controversy or anticipated to be in controversy before the Commission.

(2) For matters set for hearing under Subpart E of this part, a proposal to use alternative means of dispute resolution other than binding arbitration must be filed with the presiding administrative law judge.

(3) A proposal to use binding arbitration must be filed with the Secretary for consideration by the Commission.

(4) For all other matters, a proposal to use alternative means of dispute resolution may be filed with the Secretary for consideration by the appropriate decisional authority.

(5) The appropriate decisional authority will issue an order, approving or denying, under the guidelines in Rule 604(a)(2) and (3), a proposal to use alternative means of dispute resolution. Denial of a proposal to use alternative dispute resolution will be in the form of an order and will identify the specific reasons for the denial. A proposal to use alternative dispute resolution is deemed approved unless an order denying approval is issued within 30 days after the proposal is filed.

(6) Any request to modify a previously-approved ADR proposal must follow the same procedure used for the initial approval.

(e) *Contents of proposal.* A proposal to use alternative means of dispute resolution must be in writing and include:

(1) A general identification of the issues in controversy intended to be resolved by the proposed alternative dispute resolution method;

(2) A description of the alternative dispute resolution method(s) to be used;

(3) The signatures of all participants or evidence otherwise indicating the consent of all participants; and

(4) A certificate of service pursuant to Rule 2010(h).

(f) *Monitoring the alternative dispute resolution proceeding.* The decisional authority may order reports on the status of the alternative dispute resolution proceeding at any time.

(g) *Termination of alternative dispute resolution proceeding.* (1) The decisional authority, upon motion or otherwise, may terminate any alternative dispute resolution

proceeding under Rule 604 or 605 by issuing an order to that effect.

(2) A decision to terminate an alternative dispute resolution proceeding is not subject to judicial review.

#### §385.605 Arbitration (Rule 605).

(a) *Authorization of arbitration.* (1) The participants may at any time submit a written proposal to use binding arbitration under the provisions of Rule 605 to resolve all or part of any matter in controversy, or anticipated to be in controversy, before the Commission.

(2) The proposal must be submitted as provided in Rule 604(d).

(3) The proposal must be in writing and contain the information required in Rule 604(e).

(4) An arbitration proceeding under this rule may be monitored and terminated as provided in Rule 604(d) and (g).

(5) No person may be required to consent to arbitration as a condition of entering into a contract or obtaining a benefit. All interested parties must expressly consent before arbitration may be used.

(b) *Arbitrators.* (1) The participants to an arbitration proceeding are entitled to select the arbitrator.

(2) The arbitrator must be a neutral who meets the criteria of a neutral under Rule 604(c).

(c) *Authority of arbitrator.* An arbitrator to whom a dispute is referred under this section may:

(1) Regulate the course of and conduct arbitral hearings;

(2) Administer oaths and affirmations;

(3) Compel the attendance of witnesses and the production of evidence to the extent the Commission is authorized by law to do so; and

(4) Make awards.

(d) *Arbitration proceedings.* (1) The arbitrator will set a time and place for the hearing on the dispute and must notify the participants not less than 5 days before the hearing.

(2) Any participant wishing that there be a record of the hearing must:

(i) Prepare the record;

(ii) Notify the other participants and the arbitrator of the preparation of the record;

(iii) Furnish copies to all identified participants and the arbitrator; and

(iv) Pay all costs for the record, unless the participants agree otherwise or the arbitrator determines that the costs should be apportioned.

(3) (i) Participants to the arbitration are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing to the same

extent as in a proceeding under Subpart E of this part;

(ii) The arbitrator may, with the consent of the participants, conduct all or part of the hearing by telephone, television, computer, or other electronic means, if each participant has an opportunity to participate.

(iii) The hearing must be conducted expeditiously and in an informal manner.

(iv) The arbitrator may receive any oral or documentary evidence, except that irrelevant, immaterial, unduly repetitious, or privileged evidence may be excluded by the arbitrator.

(v) The arbitrator will interpret and apply relevant statutory and regulatory requirements, legal precedents, and policy directives.

(4) No interested person will make or knowingly cause to be made to the arbitrator an unauthorized *ex parte* communication relevant to the merits of the proceeding, unless the participants agree otherwise. If a communication is made in violation of this prohibition, the arbitrator will ensure that a memorandum of the communication is prepared and made a part of the record, and that an opportunity for rebuttal is allowed. Upon receipt of such communication, the arbitrator may require the offending participant to show cause why the claim of the participant should not be resolved against the participant as a result of the improper conduct.

(5) The arbitrator will make the award within 30 days after the close of the hearing or the date of the filing of any briefs authorized by the arbitrator, whichever date is later, unless the participants and the arbitrator agree to some other time limit.

(e) *Arbitration awards.* (1)(i) The award in an arbitration proceeding under Subpart F of this part will include a brief, informal discussion of the factual and legal basis for the award.

(ii) The prevailing participants must file the award with the Commission, along with proof of service on all participants.

(2) The award in an arbitration proceeding will become final 30 days after it is filed, unless the award is vacated. The Commission, upon motion or otherwise, may extend the 30-day period for one additional 30-day period by issuing a notice of the extension before the end of the first 30-day period.

(3) A final award is binding on the participants to the arbitration proceeding.

(4) An award may not serve as an estoppel in any other proceeding for any issue that was resolved in the proceeding. The award also may not be

used as precedent or otherwise be considered in any factually unrelated proceeding or in any other arbitration proceeding.

(f) *Vacating an award.* (1) Within 10 days after the award is filed, any person may file a request with the Commission to vacate an arbitration award and must serve the request to vacate on all participants. Responses to such a request are due 10 days after the request is filed.

(2) Upon request or otherwise, the Commission may vacate any award issued under this rule before the award becomes final by issuing an order to that effect, in which case the award will be null and void.

(3) Rule 2202 regarding separation of functions applies with respect to a decision to vacate an arbitration award.

(4) If the Commission vacates an award under paragraph (f)(3) of this section, a party to the arbitration may, within 30 days of the action, petition the Commission for an award of attorney fees and expenses incurred in connection with the arbitration proceeding. The Commission will award the petitioning party those fees and expenses that would not have been incurred in the absence of the arbitration proceeding, unless the Commission finds that special circumstances make the award unjust.

(5) An arbitration award vacated under this paragraph will not be admissible in any proceeding relating to the issues in controversy with respect to which the award was made.

(6) A decision by the Commission to vacate an arbitration award is not subject to rehearing or judicial review.

#### §385.606 Confidentiality in dispute resolution proceedings (Rule 606).

(a) Except as provided in paragraphs (d) and (e) of this section, a neutral in a dispute resolution proceeding shall not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication or any communication provided in confidence to the neutral, unless:

(1) All participants in the dispute resolution proceeding and the neutral consent in writing;

(2) The dispute resolution communication has already been made public;

(3) The dispute resolution communication is required by statute to be made public, but a neutral should make the communication public only if no other person is reasonably available to disclose the communication; or

(4) A court determines that the testimony or disclosure is necessary to:

- (i) Prevent a manifest injustice;
- (ii) Help establish a violation of law;

or

(iii) Prevent harm to the public health or safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential.

(b) A participant in a dispute resolution proceeding shall not voluntarily disclose, or through discovery or compulsory process be required to disclose, any information concerning any dispute resolution communication, unless:

(1) All participants to the dispute resolution proceeding consent in writing;

(2) The dispute resolution communication has already been made public;

(3) The dispute resolution communication is required by statute to be made public;

(4) A court determines that the testimony or disclosure is necessary to:

- (i) Prevent a manifest injustice;
- (ii) Help establish a violation of law;

or

(iii) Prevent harm to the public health and safety of sufficient magnitude in the particular case to outweigh the integrity of dispute resolution proceedings in general by reducing the confidence of participants in future cases that their communications will remain confidential; or

(5) The dispute resolution communication is relevant to determining the existence or meaning of an agreement or award that resulted from the dispute resolution proceeding or to the enforcement of the agreement or award.

(c) Any dispute resolution communication that is disclosed in violation of paragraphs (a) or (b) of this section shall not be admissible in any proceeding relating to the issues in controversy with respect to which the communication was made.

(d) The participants may agree to alternative confidential procedures for disclosures by a neutral. The participants must inform the neutral before the commencement of the dispute resolution proceeding of any modifications to the provisions of paragraph (a) of this section that will govern the confidentiality of the dispute resolution proceeding. If the participants do not so inform the neutral, paragraph (a) of this section shall apply.

(e) If a demand for disclosure, by way of discovery request or other legal process, is made upon a neutral regarding a dispute resolution communication, the neutral will make reasonable efforts to notify the participants of the demand. Any participant who receives the notice and within 15 calendar days does not offer to defend a refusal of the neutral to disclose the requested information waives any objection to the disclosure.

(f) Nothing in Rule 606 prevents the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding.

(g) Paragraphs (a) and (b) of this section do not preclude disclosure of information and data that are necessary to document an agreement reached or order issued pursuant to a dispute resolution proceeding.

(h) Paragraphs (a) and (b) of this section do not prevent the gathering of information for research and educational purposes, in cooperation with other agencies, governmental entities, or dispute resolution programs, so long as the participants and the specific issues in controversy are not identifiable.

(i) Paragraphs (a) and (b) of this section do not prevent use of a dispute resolution communication to resolve a dispute between the neutral in a dispute resolution proceeding and a participant in the proceeding, so long as the communication is disclosed only to the extent necessary to resolve the dispute.

(j) Nothing in this section precludes parties from seeking privileged treatment for documents under section 388.112 of this chapter.

7. In § 385.710, paragraph (d) is added to read as follows:

**§ 385.710 Waiver of the initial decision (Rule 710).**

\* \* \* \* \*

(d) *Waiver by presiding officer.* A motion for waiver of the initial decision, requested for the purpose of certification of a contested settlement pursuant to Rule 602(h)(2)(iii)(A), may be filed with, and decided by, the presiding officer. If all parties join in the motion, the presiding officer will grant the motion. If all parties do not join in the motion, the motion is denied unless the presiding officer grants the motion within 30 days of filing the written motion or presenting an oral motion. The contents of any motion filed under this paragraph must comply with the requirements in paragraph (b) of this section. A motion may be oral or written, and may be made whenever

appropriate for the consideration of the presiding officer.

**Note:** This appendix will not be published in the *Code of Federal Regulations*.

**Appendix**

*Alternative Dispute Resolution*

Docket No. RM91-12-000

**Commenters**

American Gas Association  
American Public Power Association  
Associated Gas Distributors  
Center for Dispute Settlement and Donelan, Cleary, Wood & Maser, P.C.  
Colorado Interstate Gas Company and ANR Pipeline Company  
Colorado River Energy Distributors Association  
Enron Interstate Pipelines  
Federal Energy Bar Association  
Indicated Producers  
Interstate Natural Gas Association of America  
Natural Gas Pipeline Company of America  
Pacific Gas and Electric Company  
The Process Gas Consumers Group,  
The American Iron and Steel Institute,  
The Chemical Manufacturers Association,  
and The Georgia Industrial Group (The Industrials)  
Southern California Gas Company and Pacific Interstate Company  
Tennessee Gas Pipeline Company  
Texas Eastern Transmission Corporation,  
Panhandle Eastern Pipe Line Company,  
Trunkline Gas Company and Algonquin Gas Transmission Company (PEC Pipeline Group)  
City of Willcox, Arizona  
Williams Natural Gas Company

[FR Doc. 94-28447 Filed 11-17-94; 8:45 am]

**BILLING CODE 6717-01-P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 100**

[CGD07-94-018]

RIN 2115-AE46

**Special Local Regulations; City of Charleston, SC**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to adopt permanent special local regulations for the annual Christmas Parade of Boats. This one-day event is held each year during the second weekend of December on the Ashley River, at Charleston, South Carolina. In the past, the Coast Guard established temporary special local regulations each year to protect the safety of life on the navigable waters during the effective times. However, because the event recurs annually, the Coast Guard is

proposing a permanent description of the event and establishment of permanent regulations in the Code of Federal Regulations (CFR) to better serve the boating public by creating a permanent reference.

**DATES:** Comments must be received on or before January 17, 1995.

**ADDRESSES:** Comments should be mailed to Commander, U.S. Coast Guard Group, 196 Tradd Street, Charleston, South Carolina 29401. The comments and other materials referenced in this notice will be available for inspection and copying at this same address. Normal office hours are between 7:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** CDR E.P. Boyle, Coast Guard Group Charleston, at (803) 724-7619.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD07-94-018] and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

#### Drafting Information

The drafters of these regulations are LTJG J.M. SICARD, Assistant Operations Officer, Coast Guard Group Charleston, project officer, and LT J.M. LOSEGO, project attorney, Seventh Coast Guard District Legal Office.

#### Discussion of Regulations

Approximately fifty 25 to 60 foot pleasure craft, both power and sail, participate in the parade of boats, with approximately 150 spectator craft expected. The participating vessels will be decorated with Christmas lights and sail around the point of Charleston peninsula. The parade route includes the Cooper, Wando, and Ashley Rivers, and intersects three commercial shipping channels, posing an extra or unusual hazard in the navigable waters. These regulations provide for the safety of life in the navigable waters during the event.

#### Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT (44 FR 11040; February 26, 1979) is unnecessary. The regulated area encompasses less than six nautical miles of waters on the Wando River, Cooper River, and Ashley River, entry into which is prohibited for two and a half hours on the day of the event.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal consistent with Section 2.B.2.c of Commandant Instruction M16475.1B, and this proposal has been determined to be categorically excluded. A copy of the Categorical Exclusion document is available in the docket for inspection and copying.

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

#### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

#### PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.707 is added to read as follows:

#### § 100.707 Cooper, Wando, and Ashley Rivers, Charleston, SC

(a) *Regulated area.* The regulated area includes the area 500 yards ahead of the lead parade vessel, 100 yards astern of the last parade vessel, and 50 yards to either side of all parade vessels along the parade route described in paragraph (b)(1) of this section.

(b) *Special local regulations.* (1) The parade route begins from that portion of Charleston Harbor commencing at Wando River Terminal Buoy 4 (Light List Number 3440) at approximate position 32°49.09' N, 079°54.16' W, thence to the upper end of Hog Inlet Reach at approximate position 32°48.26' N, 079°54.54' W, thence to approximate position 32°48.07' N, 079°54.55' W, below the Cooper River Bridges, thence southeast to approximately two-tenths of a nautical mile north of the USS Yorktown at approximate position 32°47.35' N, 079°54.37' W, thence south past the USS Yorktown to approximate position 32°47.20' N, 079°54.33' W, thence west to Customs House Reach at approximate position 32°47.20' N, 079°55.17' W, thence south to 32°45.50' N, 079°55.18' W (approximately one half nautical mile southeast of Battery Point), thence up the Ashley River, and continuing to the finishing point at City Marina (32°46.53' N, 079°57.28' W).

(2) Entry into the regulated area by other than authorized parade participants or official patrol vessels is prohibited, unless otherwise authorized by the Patrol Commander.

(3) The regulated area will be enforced by a regatta patrol. The Coast Guard Patrol Commander will be monitoring VHF-FM channels 16 and 22A. Guide boats will be stationed along the parade route to mark the major course changes.

(4) After termination of the Christmas Parade of Boats and departure of parade participants from the regulated area, all vessels may resume normal operations.

(c) *Effective dates* This section will be effective annually on Saturday during the first or second week of December with dates and times as published by a Notice of Implementation in the *Federal Register* and in the Seventh Coast Guard District Local Notice to Mariners. In case of inclement weather, alternate rain dates will be established for Sunday during the first or second week of December with dates and times as published by a Notice of Implementation in the *Federal Register* and in the Seventh Coast Guard District Local Notice to Mariners.

Dated: November 7, 1994.

W.P. Leahy,

Rear Admiral, U.S. Coast Guard Commander,  
Seventh Coast Guard District.

[FR Doc. 94-28581 Filed 11-17-94; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[NM-21-1-6398b; FRL-5103-5]

#### Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revision to the State Implementation Plan Correcting Sulfur Dioxide Enforceability Deficiencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** The EPA proposes to approve a revision to the New Mexico State Implementation Plan (SIP) to include revisions to New Mexico Air Quality Control Regulations (AQCRs) 602, 651, and 652. These revisions correct enforceability deficiencies and strengthen the provisions of the regulations. This action also proposes to remove AQCR 605 from the New Mexico SIP because AQCR 605 has never applied to a facility within the State, and the State's operating permits and new source review programs would govern any such sources which would exist in the future. In the final rules section of this *Federal Register*, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments on this proposed rule must be received in writing by December 19, 1994.

**ADDRESSES:** Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Regional Office

listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, suite 700, Dallas, Texas 75202-2733.

New Mexico Environment Department, Air Monitoring & Control Strategy Bureau, 1190 St. Francis Drive, room So. 2100, Santa Fe, New Mexico 87503.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, USEPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Telephone (214) 665-7258.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final action of the same title which is located in the final rules section of this *Federal Register*.

Dated: October 27, 1994.

William B. Hathaway,

Acting Regional Administrator (6A).

[FR Doc. 94-28484 Filed 11-17-94; 8:45 am]

BILLING CODE 6560-50-F

### 40 CFR Part 52

[IL12-9-5167; FRL-5107-9]

#### Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

**SUMMARY:** On June 29, 1990, the USEPA promulgated Federal stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry and Will. The USEPA also took final rulemaking action on certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP). Included in the USEPA's rules was a requirement that the Viskase Corporation's (Viskase) cellulose food casing facility in Bedford Park (Cook County) be subject to the "generic" rule for miscellaneous fabricated product manufacturing processes and the "generic" rule for miscellaneous formulation manufacturing processes. On July 19, 1990, Viskase requested that

USEPA reconsider its rule as applicable to Viskase's food casing manufacturing operations and, as a result, the USEPA convened a proceeding for reconsideration. The USEPA has considered the issues raised by Viskase and is presenting in this proposed rule both a discussion of these issues and a newly proposed rulemaking applicable to Viskase's food casing manufacturing operations. The USEPA is also proposing rulemaking on a site-specific SIP revision for Viskase that has been submitted by Illinois. The USEPA solicits public comments on the USEPA's proposed rulemaking action.

**DATES:** Comments on this proposal must be received by December 19, at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer by December 19, 1994 at the address below. Interested persons may call Randolph O. Cano at (312) 886-6036 to see if a hearing will be held and the date and location of the hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

**ADDRESSES:** Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604.

Comments should be strictly limited to the subject matter of this proposal.

**DOCKET:** Pursuant to section 307(d)(1)(B) and (N) of the Clean Air Act (Act), 42 U.S.C. 7607(d)(1)(B) and (N) (1991), this action is subject to the procedural requirements of section 307(d). Therefore, the USEPA has established a public docket for this action, A-93-37, which is available for public inspection and copying between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Rachel Romine before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, 18th Floor, Southwest, 77 West Jackson Blvd., Chicago, Illinois 60604.

U.S. Environmental Protection Agency, Docket No. A-93-37, Air Docket (LE-131), room M1500, Waterside Mall, 401 M Street SW., Washington, DC 20460, (202) 245-3639.

**FOR FURTHER INFORMATION CONTACT:** Steven Rosenthal, Regulation

Development Branch, United States Environmental Protection Agency, Region 5, (312) 886-6052, at the Chicago address indicated above.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In an effort to comply with certain requirements under Part D of the Act, as amended in 1977, 42 U.S.C. 7401 et seq. (1990),<sup>1</sup> the Illinois Pollution Control Board (IPCB) adopted an organic emission "generic" rule on April 7, 1988. The purpose of the generic rule was to satisfy the USEPA's requirement that Illinois adopt rules for major (100 tons per year (TPY) and greater) non-CTG sources.<sup>2</sup> This requirement is discussed in the April 4, 1979, General Preamble for Proposed Rulemaking (44 FR 20372).

The Illinois Environmental Protection Agency (IEPA) first proposed to the IPCB to control VOCs through a "generic rule" on May 12, 1986. The first hearings on this rule were held in October 1986. A revised and second revised generic rule were subsequently submitted by IEPA. Hearings on the generic rule were held February 10 and 11, 1987, and April 23 and 24, 1987. At the April 23, 1987, hearing, IEPA presented a fourth proposal (alternative generic proposal), and recommended that it be adopted rather than the original or either of its two revisions.

On August 6, 1987, the IPCB adopted the IEPA's alternative generic proposal for First Notice of Adoption, which was published in the August 28, 1987, *Illinois Register*. On November 2, 1987, the Illinois Department of Energy and Natural Resources filed an Economic Impact Study (EclIS). Two hearings were held on the EclIS (December 14, 1987, and December 18, 1987). On February 4, 1988, the IPCB adopted the alternative rule for Second Notice, and on April 7,

1988, the IPCB adopted, as a final rule, the alternative proposal.

Under the adopted generic rule, Subpart PP, "Miscellaneous Fabricated Manufacturing Processes," regulates "a manufacturing process involving \* \* \* viscose solutions for food casings," and Subpart QQ, "Miscellaneous Formulation Manufacturing Processes," regulates "a manufacturing process which compounds \* \* \* viscose solutions." These subparts require that sources either comply with an emission limit of 3.5 pounds volatile organic material (VOM) per gallon coating (which only applies to coating sources and therefore doesn't apply to Viskase because it isn't a coating source) or 81 percent reduction in VOM emissions from uncontrolled levels;<sup>3</sup> or that they procure an Adjusted RACT emission limitation from the IPCB.

On August 5, 1988, Viskase filed a Petition for Adjusted RACT Emissions Limitation with the IPCB. Under the generic rule's adjusted standards procedures, Viskase was required to show that an 81 percent reduction in uncontrolled VOM emissions is not RACT for Viskase, and that the emission levels proposed by Viskase are RACT and would not interfere with the State's plan for achieving ambient air quality standards.

On January 5, 1989, the IPCB ruled that an 81 percent reduction of uncontrolled emissions would not constitute RACT for Viskase's Bedford Park facility. The IPCB determined that a 33 percent reduction in allowable VOM emissions (to a level of 994 tons per year) constitutes RACT for the Bedford Park facility and would not interfere with the State's progress toward achieving attainment of the ambient air quality standards.

At that time, the IPCB adopted the following emission standards applicable to Viskase's Bedford Park plant.

1. The volatile organic material (VOM) emissions from Viskase's Bedford Park plant shall not exceed 994 tons per year. In addition, VOM emissions, computed on a monthly average basis, shall not exceed the following: 2.22 tons per day for each month during the period from June through August; and 3.30 tons per day for each month during the period from September through May.

32. Emissions of VOM, including carbon disulfide, from the Bedford Park plant shall be determined from raw material consumption and plant-specific

emission factors. These factors shall be developed using the methods and procedures for testing contained in 40 CFR Part 60 (1988), including Appendix A, Methods 2, 2A, 2B, 15, 25, 25A and 25B, as appropriate. The methodology for computing a monthly average from daily emission values will be determined by the permit, issued to Viskase by the Illinois Environmental Protection Agency, which prescribes the emission standards set forth herein.

3. In accordance with the applicable methodologies, Viskase shall:

(a) Maintain a monthly record of raw material consumption by each process or group of processes subject to a different emission factor; and

(b) Calculate and record monthly VOM emissions, daily VOM emissions, average daily VOM emissions in tons/day, on a monthly basis.

4. (a) Records of testing shall be retained by Viskase at its Bedford Park facility for at least 5 years following the date last relied upon for calculating emissions; and

(b) Raw material consumption records, VOM emission calculations, and VOM emission records shall be retained by Viskase at its Bedford Park facility for at least 2 years following the date prepared.

The IEPA submitted this adjusted standard to USEPA as a proposed revision to the Illinois SIP<sup>4</sup> on February 24, 1989.

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin against the USEPA and sought a judgment that the USEPA, among other requested actions, be required to promulgate revisions to the Illinois ozone SIP for northeastern Illinois. *Wisconsin v. Beilly*, No. 87-C-0395, (E.D. Wis.). On January 18, 1989, the District Court ordered that USEPA promulgate an ozone implementation plan for northeastern Illinois within 14 months of the date of that order. On September 22, 1989, the USEPA and the States of Illinois and Wisconsin signed a settlement agreement in an attempt to substitute a more acceptable schedule for promulgation of a plan for the control of ozone in the Chicago area. On November 6, 1989, the District Court vacated its prior order and ordered all further proceedings stayed, pending the performance of the settlement agreement.

<sup>4</sup> Under Illinois' regulatory procedures, IEPA does not have the authority to adopt regulations, but must submit recommended proposals for adoption to the IPCB, an independent rulemaking body. IEPA is, however, responsible for submitting such regulations to USEPA as proposed SIP revisions.

<sup>1</sup> The Clean Air Act was amended on November 15, 1990, Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q (1991). However, the USEPA's obligation to promulgate a Federal Implementation plan for the Chicago nonattainment area arose under the pre-amended Act, as did Illinois' obligation to submit the SIP RACT rules that the state submitted in 1988. Therefore, while the USEPA is procedurally subject to the amended Act in this proposed rulemaking, the USEPA must refer to the pre-amended Act requirements. To clarify these references, the amended Act will be referred to as the "Act" and the pre-amended Act will be referred to as the "1977 Act".

<sup>2</sup> Control techniques guideline (CTG) documents have been prepared by the USEPA to assist States in defining RACT for the control of VOC emissions from existing stationary sources. Each individual CTG recommends a presumptive norm of control considered reasonably available to a specific source category. Sources in categories for which no CTG exists are termed "non-CTG sources." See 44 FR 53762 (September 14, 1979).

<sup>3</sup> The State of Illinois uses the term "VOM" in its regulations. For the purposes of this RACT analysis, this term is considered equivalent to USEPA's term "volatile organic compounds (VOC)."

The settlement agreement called for the use of a more sophisticated air quality model, allowed more time for the USEPA to promulgate a Federal implementation plan (FIP) using the model<sup>5</sup>, and requires interim emission reductions while the modeling study is being performed. The interim emission reductions consisted of Federal promulgation of required VOM RACT rules for Illinois to remedy deficiencies in its State regulations.

On December 27, 1989, (54 FR 53080) USEPA proposed to disapprove the Illinois generic rules (Subparts AA, II, PP, QQ, RR of Part 215: Organic Material Emission Standards and Limitations) largely because the applicability criteria were not consistent with the USEPA RACT guidance for major non-CTG sources. On that date, the USEPA also proposed a number of RACT rules, including generic rules which covered all of Viskase's cellulose food casing manufacturing operations. On March 2, 1990, Viskase submitted comments to USEPA, raising a number of issues on the proposal.

On June 29, 1990, (55 FR 26814), the USEPA took final action to disapprove the Illinois' generic rules and promulgate the proposed Federal rules, including the generic "Miscellaneous Fabricated Manufacturing Processes" and "Miscellaneous Formulation Manufacturing Processes" rules. However, the USEPA stated at that time that the need to promulgate Federal regulations, under the tight timeframe ordered by the District Court, had prevented the USEPA from being able to consider fully Viskase's comments, including the merits of the proposed, alternative site-specific limits for Viskase. Consequently, the USEPA deferred the effective date of the applicable rules with regard to Viskase for six months. 55 FR 26846.

On July 19, 1990, Viskase filed a formal request that USEPA reconsider the Federal rules for Viskase, and stay the compliance date until at least one year after the USEPA has (1) fully considered the State's rules and Viskase's comments, and (2) has either promulgated a site-specific rule or formally refused to promulgate such a rule. As a result, the USEPA convened a proceeding for reconsideration

pursuant to section 307(d)(7)(B) of the Act 42 U.S.C. 7607(d)(7)(B) (56 FR 463 and 56 FR 24722). And on August 22, 1990, Viskase filed a petition for review of the USEPA's June 29, 1990, rulemaking in the United States Court of Appeals for the Seventh Circuit. Nine other parties filed petitions for review, which were ultimately consolidated by the Court as *Illinois Environmental Regulatory Group ("IERG") et al. v. Reilly*, No. 90-2778.

On January 4, 1991 (56 FR 460), the USEPA announced a three-month partial stay pending reconsideration for Viskase and two other petitioners. Elsewhere in the January 4, 1991, *Federal Register* (56 FR 463), the USEPA proposed to extend the stay beyond the three-month period, only if and as necessary to complete reconsideration of the subject rules (including any appropriate regulatory action), pursuant to the USEPA's authority to revise the Federal rules by following rulemaking procedures in sections 110(c) and 301(a)(1) of the Act, 42 U.S.C. 7410(c) and 7601(a)(1). Two of the rules for which the stay was proposed were the "Miscellaneous Fabricated Manufacturing Processes" and "Miscellaneous Formulation Manufacturing Processes" rules only as applied to Viskase's cellulose food casing manufacturing operations, codified at 40 CFR 52.741(u) and (v), as well as the July 1, 1991, compliance date, codified at 40 CFR 52.741(u)(4) and (v)(4).

On May 31, 1991, (56 FR 24722), the USEPA responded to public comments on the proposed extension of the partial stay, and took final action to extend the stay as long as necessary to complete reconsideration of the rules identified in the proposal. Today's notice, in effect, presents the results of the USEPA's reconsideration of the Federal generic rules as they apply to Viskase, and proposes rulemaking based on these results.

## II. Discussion of Viskase's Manufacturing Operations

Viskase's Bedford Park facility manufactures sausage casings and related food packaging materials using the viscose process. The viscose process, which produces regenerated cellulose food casings, is also used to produce rayon and cellophane as well as cellulose food casings.

Production of cellulose food casings by the viscose process begins with the reaction of a cellulose material, either cotton or wood pulp, with an aqueous sodium hydroxide solution to produce alkali cellulose. After aging, the alkali cellulose is reacted with carbon

disulfide to form an intermediate compound, cellulose xanthate, which is subsequently dissolved in a dilute caustic solution to form a viscous fluid called "viscose." After aging and filtering, the viscose is extruded into precision-sized tubes which are passed through a series of acid baths where the cellulose is regenerated. The extruded regenerated cellulose film is then purified, dried, and reeled and finished.

Gaseous emissions from the viscose process consist primarily of carbon disulfide and hydrogen sulfide. These gases evolve during the xanthation, coagulation, regeneration and purification stages of the process. Smaller volumes of carbon disulfide are also emitted during carbon disulfide unloading and transfer operations. In 1972, the Bedford Park plant installed a wet scrubber system to remove hydrogen sulfide from the exhaust gas stream.

## III. Viskase RACT Analysis

The IPCB's January 5, 1989, opinion on Viskase's adjusted RACT petition states that Viskase is currently permitted to emit 1,476 TPY of VOM and that its emission reduction proposal entails a reduction in allowable emissions down to 994 tons per year, or a reduction of 482 TPY. This proposed reduction in allowable emissions is to be accomplished by process changes and not add-on control. Viskase claims that it has obtained a 12.4 percent reduction in carbon disulfide emissions by switching from cotton to wood as a cellulose source.

In extensive comments submitted to USEPA on March 2, 1990, Viskase contends that an 81 percent overall VOM reduction is not RACT due to a number of reasons, including:

1. The Occupational Safety and Health Administration has recently reduced the Permissible Exposure Level for carbon disulfide from 20 parts per million (PPM) to 4 PPM. Viskase anticipates increasing the plant exhaust rate from 220,000 cubic feet per minute (CFM) to 250,000 CFM. This will increase the cost of add-on control, which is primarily based on the flowrate.

2. No other viscose cellulose food casing manufacturer in the world is presently required to control carbon disulfide emissions.

3. Of the five different technologies which are generally considered to be applicable to VOC emission control, i.e., material substitution, condensation, carbon adsorption, chemical scrubbing and thermal incineration, only thermal incineration is potentially feasible to control the Bedford Park plant carbon

<sup>5</sup>USEPA is no longer required to promulgate a FIP using the modeling results because the settlement agreement relieves USEPA of such responsibility in the event that amendments to the Act establish new deadlines for States to achieve attainment of the ozone standard. The primary responsibility for developing any remaining revisions to Illinois' State implementation plan belongs to Illinois because the Clean Air Act Amendments of 1990 establishes such new deadlines.

disulfide emissions to the level required by the proposed Federal rule. An incineration control system to be utilized at the Bedford Park plant to control carbon disulfide emissions however would be enormously expensive according to Viskase, who estimates that the annual costs of control would be \$7,890 per ton of carbon disulfide removed.

4. In addition to unreasonable economic costs, the cross-media environmental impact of an incinerator would also be substantial. Incineration would produce sulfur dioxide as an incineration product, in amounts more than twice the amount of carbon disulfide destroyed. Incineration of the Bedford Park plant's carbon disulfide emissions would also result in the incinerator being considered a new "major source" of sulfur dioxide under the Clean Air Act, and would require Viskase to install and operate sulfur dioxide control equipment. That equipment would, in turn, result in the discharge with the Bedford Park plant's wastewaters of 3.9 pounds of sodium sulfate for each pound of carbon disulfide incinerated, or more than 7,000,000 pounds per year of sodium sulfate, which would not otherwise be discharged to the waters of Illinois. In addition to sulfur dioxide, incineration would also produce approximately 17.4 pounds of carbon dioxide for each pound of carbon disulfide destroyed, or 28,000,000 new pounds of carbon dioxide, which would not otherwise be emitted.

5. The IPCB's January 5, 1989, opinion states that carbon disulfide has substantially less ozone producing capability than a typical VOM.

After reviewing Viskase's comments, USEPA has determined that an 81 percent reduction of uncontrolled VOM emissions would not constitute RACT for Viskase's Bedford Park facility. The USEPA has also determined that a 33 percent reduction in Viskase's allowable emissions to 994 tons per year is RACT for Viskase.

However, the control requirements established by the IPCB in its January 5, 1989, order are not approvable for the following reasons:

1. There are no short-term emission limitations. Viskase is limited to 994 TPY and 2.22 tons per day, on a monthly average, from June through August, and 3.30 tons per day, on a monthly average, for the remaining months of the year. The USEPA's January 20, 1984, policy memorandum, titled "Averaging Times for Compliance with VOC Emission Limits—SIP Revision Policy" clarifies USEPA's policy regarding emission time

averaging for existing sources of VOC. The objective of USEPA's national VOC emissions control program is the timely attainment and maintenance of the national ambient air quality standard for ozone. Therefore, averaging times must be reasonably consistent with protecting the short-term ozone standard. Further, since SIPs and associated VOC control programs contemplate the actual application of RACT, regulatory actions that incorporate longer term averages to circumvent the installation of overall RACT level controls cannot be allowed. Therefore to protect the ozone standard and ensure RACT, this policy prohibits longer than daily averaging unless source operations are such that daily VOC emissions cannot be determined or where the application of RACT is not economically or technically feasible. In those cases in which daily emissions cannot be determined or in which daily averaging is not feasible, longer averaging times can be permitted if the conditions specified in this policy memorandum are followed. However, Viskase has neither demonstrated that daily VOC emissions cannot be determined, nor demonstrated the infeasibility of complying on a daily basis. In addition, Viskase has not satisfied the other conditions in this policy memorandum nor explained why such conditions should not be applicable. The general need for daily averaging is also stated on page 2-10 of "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," a May 25, 1988, USEPA guidance document.

2. The IPCB's order states that emissions of VOM, including carbon disulfide, from the Bedford Park plant shall be determined from raw material consumption and plant-specific emission factors and these factors are to be developed using the test methods in 40 CFR Part 60, including Appendix A, Methods 2, 2A, 2B, 15, 25, 25A and 25B, as appropriate. While this is a generally reasonable approach, a specific method is required for review to ensure that the daily VOM emissions are determined in a consistent and accurate manner.

3. The recordkeeping requirements in the IPCB's order are too general to be enforceable.

On February 9, 1994, representatives from Viskase met with representatives from USEPA to discuss daily emission levels and recordkeeping practices, and provided USEPA with technical information about its process operations and emissions.

The USEPA has determined, based upon the previously discussed information, that RACT for Viskase consists of the following:

1. VOM emissions shall never exceed 3.30 tons per day.

2. VOM emissions shall not exceed 2.22 tons per day, on a monthly average, during June, July, and August.

3. VOM emissions shall not exceed 2.44 tons per day during June, July, and August.

4. Compliance with the emission limits in items 1-3 above, and the records in item 5 below, shall be determined using an emission factor of "0.72 pounds of VOM emissions per pound of carbon disulfide consumed."

5. Viskase must keep the following daily records:

(a) The pounds of carbon disulfide per charge for its fibrous process. If charges with different levels of carbon disulfide per charge are used the same day, a separate record must be kept for each level of carbon disulfide per charge.

(b) The pounds of carbon disulfide per charge for its NOJAX process. If charges with different levels of carbon disulfide per charge are used the same day, a separate record must be kept for each level of carbon disulfide per charge.

(c) The number of charges per day, for each level of carbon disulfide per charge, used in Viskase's Fibrous process.

(d) The number of charges per day, for each level of carbon disulfide per charge, used in Viskase's NOJAX process.

(e) The total quantity of carbon disulfide used per day in Viskase's Fibrous process, the total quantity of carbon disulfide used per day in Viskase's NOJAX process, and the daily VOM emissions resulting from use of the carbon disulfide.

(f) The monthly use of carbon disulfide, and the monthly VOM emissions resulting from use of the carbon disulfide, during June, July, and August.

6. Any violation of the emission limits in items 1, 2, or 3 above must be reported to USEPA within 30 days of its occurrence.

7. In order to determine daily and monthly VOM emissions, the test methods in section 52.741(a)(4) may be used in addition to, and take precedence over, the emission factor cited in item 4 above. Method 15 is to be used instead of Methods 18, 25, and 25A when the test methods in section 52.741(a)(4) are used to determine VOM emissions from Viskase's cellulose food casing facility.

Compliance with these requirements is required three months from the date this action becomes final. This will allow time for Viskase to develop its recordkeeping procedures.

#### IV. SIP Revision Proposed by Illinois for Viskase

On February 24, 1989, Illinois submitted a proposed revision to the Illinois SIP. This revision consists of an adjusted RACT Standard for Viskase, docketed as AS-88-1 by the IPCB.

On January 5, 1989, the IPCB adopted an opinion and order for this proceeding. This IPCB Order limits VOM emissions to 994 TPY, 2.22 tons per day, on a monthly average, for June, July, and August, and 3.30 tons per day, on a monthly average, for the remaining months.

The USEPA is proposing to disapprove this requested SIP revision for the following reasons: (1) monthly averaging is inconsistent with USEPA policy regarding RACT; (2) there are no specific procedures for calculating daily emissions; and (3) there are no specific recordkeeping requirements.

#### V. Summary and Conclusions

USEPA is proposing to disapprove the requested SIP revision submitted by IEPA because of the reasons provided in the above paragraph. USEPA is also proposing to promulgate RACT VOC emission limits generally consistent to what was adopted by the IPCB. However, USEPA has added daily emission limits and recordkeeping requirements which will make the RACT limits enforceable. Also, USEPA is proposing to withdraw the May 31, 1991, stay.

USEPA is taking this action pursuant to its authority under section 110(k)(6) of the Act to correct through rulemaking any plan or plan revision.<sup>6</sup> USEPA is interpreting this provision to authorize the USEPA to make corrections to a promulgated regulation when it is shown to USEPA's satisfaction that the information made available to the USEPA at the time of promulgation is subsequently demonstrated to have been clearly inadequate, and other information persuasively supports a

change in the regulation. See 57 FR 6762 at 6763 (November 30, 1992). In this case, the information made available to USEPA during the rulemaking for Viskase was inadequate for the development of a site-specific RACT determination.<sup>7</sup>

Public comment is solicited on this proposal for Viskase. Public comments received by the date shown above will be considered in the development of USEPA's final rule.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., the USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, the USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This action involves only one source, Viskase Corporation. Viskase is not a small entity. Therefore, the USEPA certifies that this RACT promulgation does not have a significant impact on a substantial number of small entities.

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: November 10, 1994.

Carol M. Browner,  
Administrator.

For reasons set forth in the preamble, it is proposed that part 52, chapter I, title 40 of the Code of Federal Regulations be amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### Subpart O—Illinois

2. Section 52.741 is amended by adding a new paragraph (u)(8) and removing and reserving paragraph (z)(1) to read as follows:

**§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.**

\* \* \* \* \*

<sup>7</sup> As discussed earlier, USEPA was required to promulgate the June 29, 1990, regulations under the tight timeframe ordered by the Court in *Wisconsin v. Reilly*.

(u) \* \* \*

(8) The control, recordkeeping and reporting requirements in this paragraph apply to the cellulose food casing manufacturing operations at the Viskase Corporation plant in Bedford Park, Illinois (Cook County) instead of the requirements in paragraph (v) of this section, the other parts of paragraph (u) of this section, and the recordkeeping requirements in paragraph (y) of this section. Unless otherwise stated, the following requirements must be met by Viskase on and after three months after date of publication of the final rule in the **Federal Register**.

(i) VOM emissions shall never exceed 3.30 tons per day.

(ii) VOM emissions shall not exceed 2.22 tons per day, on a monthly average, during June, July, and August.

(iii) VOM emissions shall not exceed 2.44 tons per day during June, July, and August.

(iv) Compliance with the emission limits in paragraphs (u)(8)(i) through (iii) of this section, and the records in paragraph (u)(8)(v) of this section, shall be determined using an emission factor of "0.72 pounds of VOM emissions per pound of carbon disulfide consumed."

(v) Viskase must keep the following daily records:

(A) The pounds of carbon disulfide per charge for its Fibrous process. If charges with different levels of carbon disulfide per charge are used the same day, a separate record must be kept for each level of carbon disulfide per charge.

(B) The pounds of carbon disulfide per charge for its NOJAX process. If charges with different levels of carbon disulfide per charge are used the same day, a separate record must be kept for each level of carbon disulfide per charge.

(C) The number of charges per day, for each level of carbon disulfide per charge, used in Viskase's Fibrous process.

(D) The number of charges per day, for each level of carbon disulfide per charge, used in Viskase's NOJAX process.

(E) The total quantity of carbon disulfide used per day in Viskase's Fibrous process, the total quantity of carbon disulfide used per day in Viskase's NOJAX process, and the daily VOM emissions resulting from use of the carbon disulfide.

(F) The monthly use of carbon disulfide, and the monthly VOM emissions resulting from use of the carbon disulfide, during June, July, and August.

(vi) Any violation of the emission limits in paragraphs (u)(8) (i) through

<sup>6</sup> Since USEPA is taking this action pursuant to section 110(k)(6), USEPA believes that section 193 of the Act (the savings clause) is inapplicable. By its terms, section 110(k)(6) does not require any additional submission or evidence. Section 193 requires an assurance of equivalency for any revision and, in order to provide for equivalency, the State would need to provide for compensating reductions. USEPA believes that this conflict should be resolved concluding that section 110(k)(6) is not constrained by the savings clause requirement of equivalent reductions. USEPA believes that the State and the sources within the State should not have to bear the burden of additional reductions where USEPA lacked important site-specific information at the time of an initial promulgation. This is particularly true in the case of FIPs, where USEPA takes the lead in developing the regulations and is not merely acting on State-submitted regulations.

(iii) of this section must be reported to USEPA within 30 days of its occurrence.

(vii) In order to determine daily and monthly VOM emissions, the test methods in § 52.741(a)(4) may be used in addition to, and take precedence over, the emission factor cited in paragraph iv above. Method 15 is to be used instead of Methods 18, 25, and 25A when the test methods in § 52.741(a)(4) are used to determine VOM emissions from Viskase's cellulose food casing facility.

\* \* \* \* \*

[FR Doc. 94-28548 Filed 11-17-94; 8:45 am]  
BILLING CODE 6350-50-P

#### 40 CFR Part 52

[IL12-10-5171; FRL-5107-8]

#### Approval and Promulgation of Implementation Plans; Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

**SUMMARY:** On June 29, 1990, the USEPA promulgated Federal stationary source volatile organic compound (VOC) control measures representing reasonably available control technology (RACT) for emission sources located in six northeastern Illinois (Chicago area) counties: Cook, DuPage, Kane, Lake, McHenry and Will. The USEPA also approved and disapproved certain VOC RACT rules previously adopted and submitted by the State of Illinois for inclusion in its State Implementation Plan (SIP). Among the State rules that USEPA disapproved was Illinois' VOC rule for "Power driven fastener coating" operations, which applied to the Duo-Fast Corporation's (Duo-Fast) staple manufacturing operations in Franklin Park, Illinois. As a result, Duo-Fast became subject to the federally promulgated miscellaneous metal parts and products coating rule, with more stringent emission limits, because its coating operations belong to that source category. Subsequently, Duo-Fast requested that USEPA reconsider its rules as they apply to Duo-Fast. The USEPA has considered Duo-Fast's contentions concerning its coating operations and is presenting in this document a discussion and analysis of the principal issues and USEPA's basis for not exempting Duo-Fast from the miscellaneous metal parts and products coating rule. USEPA solicits public comment on this proposed rulemaking action.

**DATES:** Comments on this proposal must be received by December 19, 1994. A

public hearing, if requested, will be held in Chicago, Illinois. Requests for a public hearing should be submitted to J. Elmer Bortzer by December 19, 1994.

**ADDRESSES:** Written comments on this proposed action should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments should be strictly limited to the subject matter of this proposal.

**Docket:** Pursuant to sections 307(d)(1) (B) and (N) of the Clean Air Act (Act), 42 U.S.C. 7607(d)(1) (B) and (N), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, A-94-06, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Rachel Romine before visiting the Washington, DC location. A reasonable fee may be charged for copying.

The United States Environmental Protection Agency, Region 5, Regulation Development Branch, Eighteenth Floor, Southeast, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6036.

United States Environmental Protection Agency, Docket No. A-94-06, Air Docket (LE-131), room M1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460, (202) 245-3639.

#### FOR FURTHER INFORMATION CONTACT:

Steven Rosenthal, Regulation Development Branch, United States Environmental Protection Agency, Region 5, (312) 886-6052, at the Chicago address indicated above. Interested persons may call Ms. Hattie Geisler at (312) 886-3199 to see if a hearing will be held and the date and location of the hearing.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On December 30, 1982, the Illinois Pollution Control Board (IPCB) adopted VOC rules for a number of source categories that are covered by the second group (Group II) of Control Techniques Guideline (CTG) documents.<sup>1</sup> This includes the

"miscellaneous metal parts and products" (MMPP) category to which Duo-Fast's operations belong. The MMPP coating limits<sup>2</sup> in Illinois' rule, which are consistent with the miscellaneous metal parts and products CTG, are:

- (1) Clear Coating—4.3 pounds VOC/gallon of coating
- (2) Air-dried coating—3.5 pounds VOC/gallon of coating
- (3) Extreme performance coating—3.5 pounds VOC/gallon of coating
- (4) All other coatings—3.0 pounds VOC/gallon of coating.

On December 22, 1987, the IPCB amended Section 215.204 to require that exempt (non-VOC) material be treated like water, that is, subtracted from the volume of coating in calculating the VOC content. On the same date, the IPCB adopted a revision to Illinois' MMPP coating limits. This revision to Section 215.204(j) established less stringent coating limits for certain power driven fastener coatings. These limits are:

- |   |                                   |
|---|-----------------------------------|
| (a) Nail coating .....  | MMPP limits apply.                |
| (b) Staple, brad and finish nail unit fabrication bonding coating.                      | 5.3 pounds VOC/gallon of coating. |
| (c) Staple, brad and finish nail incremental fabrication lubricity coating.             | 5.3 pounds VOC/gallon of coating. |
| (d) Staple, brad and finish nail incremental fabrication withdrawal resistance coating. | 5.0 pounds VOC/gallon of coating. |
| (e) Staple, brad, and finish nail unit fabrication coating.                             | 5.3 pounds VOC/gallon of coating. |

On March 28, 1988, Illinois submitted these rule revisions to USEPA. Although USEPA found the treatment of exempt solvents to be acceptable, it determined that the power driven fastener coating limitations, which apply only to Duo-Fast, do not constitute RACT. USEPA, therefore, proposed to disapprove the State's power driven fastener coating rule (Section 215.204(j)(4)) on December 27, 1989 (54 FR 53080); and, after a January 17, 1990, public hearing at which Duo-Fast provided comments, took final action to disapprove the rule on June 29, 1990 (55 FR 26814 at 26847). On the same date, USEPA promulgated Federal RACT rules that included coating limitations for MMPP, which it determined were RACT for

<sup>1</sup> CTG documents have been prepared by USEPA to assist States in defining RACT for the control of VOC emissions from existing stationary sources. The Group II CTGs are those that were issued between January 1978 and January 1979. RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the

application of control technology that is reasonably available, considering technological and economic feasibility.

<sup>2</sup> Coating limits are expressed in terms of pounds of VOC per gallon of coating (minus water and any compounds which are specifically exempted from the definition of VOC).

Duo-Fast. 40 CFR 52.741(e)(1)(i)(j), 55 FR at 26868.

In taking these final actions to disapprove the State rule and establish Federal RACT limits for Duo-Fast, USEPA reviewed the State record in detail. This included an examination of the efforts made by Duo-Fast to attempt to comply with the MMPP coating limitations as described in the State record. USEPA nonetheless concluded that, for the most part, the State record arguments were conclusory and technically unsupported. See July 19, 1988, Technical Support Document (TSD) and 55 FR 26839-40 (June 29, 1990).

In its June 29, 1990, promulgation, USEPA required (just as the IPCB did in its December 22, 1987, amendment to Section 215.204) that for VOC emission limitations which are in terms of pounds of VOC per gallon of coating, water and exempt compounds must be subtracted from the volume of coating. USEPA's rationale for requiring that exempt solvents be excluded from the calculation of the VOC content of coatings is contained in a May 21, 1991, memorandum, prepared for USEPA by Phil Norwood and Elizabeth Bowen of Pacific Environmental Services, titled "The Exclusion of Exempt Solvents from the Calculation of the VOC Content of Coatings." As discussed in the RACT analysis below, compliance with the MMPP limits is feasible without counting exempt solvents as part of the coating (in calculating the pounds of VOC per gallon of coating).

On November 27, 1990, Duo-Fast requested that USEPA convene a proceeding for reconsideration of the Federal rules pursuant to Section 307(d)(7)(B) of the Act, 42 U.S.C. 7607(d)(7)(B). Duo-Fast's basis for this request is USEPA's failure to respond to Duo-Fast's (apparently misfiled) March 2, 1990, comments on the December 27, 1989, proposed promulgation. USEPA agreed to reconsider the RACT rules for Duo-Fast, and on July 23, 1991, it published a final rule in the Federal Register staying the rules applicable to Duo-Fast for three months, pending USEPA's reconsideration of those rules (56 FR 33712), and a proposed rule to extend that three-month period, but only if and as long as necessary to complete reconsideration (56 FR 37738). USEPA's notice of final rulemaking to extend the stay was published in the Federal Register on March 3, 1992 (57 FR 7549). This proposed rule presents the results of the USEPA's reconsideration of the Federal RACT rules as they apply to Duo-Fast, and proposes rulemaking based on these results.

## II. Duo-Fast Ract Analysis

Duo-Fast operates a manufacturing facility in Franklin Park, Illinois for the manufacture of "power driven fasteners" such as nails, staples and brads. Its coating operations are carried out on a large number of conventional staple-making machines and five newer multi-wire staple-making machines. The five machines in Duo-Fast's multi-wire staple-making operations utilize an organic solvent-based combination cement. Depending upon the staple type, between 50 to 80 separate wires are brought together continuously and simultaneously to be bonded into a single band with the combination cement material being applied from a single reservoir. The conventional type machines use a cement and up to two separate coating materials supplied from three reservoirs per machine. Two wires are cyclically fed into the machine in a typical operation.

As stated previously, Duo-Fast's operations fall under the general category of MMPP coating. The USEPA had previously established that the presumptive norms for RACT as provided in the MMPP coating CTG are feasible for facilities in this category. These limits have been subsequently incorporated in State VOC rules. However, to establish RACT for Duo-Fast, USEPA has gone even further than comparing Duo-Fast to other MMPP facilities by identifying and comparing Duo-Fast to those MMPP facilities most similar to it. The USEPA believes that if control technology is available to a comparable facility and no unique conditions are identified which would prevent this technology from being feasible at the subject facility, then RACT for the two companies is the same.

A June 1992 "RACT ANALYSIS FOR DUO-FAST CORPORATION" was prepared to determine RACT for Duo-Fast's power driven fastener coating operations. This RACT analysis contains a comparison of other similar companies with Duo-Fast and an evaluation of control equipment costs for Duo-Fast.

### (A) Comparison of Other Similar Companies With Duo-Fast

Senco Products (Senco), located in Cincinnati, Ohio, and Stanley Bostitch (Bostitch), located in East Greenwich, Rhode Island, are similar to Duo-Fast (as indicated in the comparison below) and are complying with more stringent emission limitations. A comparison of these facilities and the emission limits with which these facilities are complying follows.

### (1) Products

The three companies compete directly in the power driven fastener industry and their fasteners have the same end use. Their products can be considered comparable.

### (2) Processes

The companies all have multiwire-type machines that band numerous wires together which are stamped into strips of staples. The conventional type staple machines appear to be very similar at all three facilities.

### (3) Coatings and Adhesives

All three companies use coatings which have the same functions. These functions are as an adhesive, as a lubricant to aid in penetration, and as a retention coating to retard removal.

### (4) Applicable Emission Limits

Duo-Fast Bonding coating (adhesive).	5.3 lbs/gallon—water, exempt compounds.
Lubricity coating.	5.3 lbs/gallon—water, exempt compounds.
Withdrawal resistance coating.	5.0 lbs/gallon—water, exempt compounds.
Unit fabrication coating.	5.3 lbs/gallon—water, exempt compounds.
Stanley Bostitch Multiple wire winders:	
Post-incinerator rating.	2.9 lbs/gallon—water.
Maximum adhesive VOC content.	39.4 lbs VOC/gallon solids applied—water.
Senco Incinerator on bandlines.	85% overall reduction with 97% destruction.

Both Bostitch and Senco have entered into consent agreements with environmental agencies and are subject to more stringent regulations than the power driven fastener coating limits adopted by the IPCB.

### (5) Methods of Compliance

#### Stanley Bostitch

The multiple wire winders control VOC emissions by the use of an incinerator. Bostitch has demonstrated compliance with a stack test which demonstrated that the incinerator achieves 95 percent destruction efficiency, which meets the 2.9 lbs/gallon post-incinerator rating. This incinerator controls emissions generated by the application of adhesives and the application of withdrawal resistance/penetration coatings.

#### Senco

Senco has a thermal incinerator on its bandlines which demonstrated compliance (by stack testing) with its

control efficiency limits (85 percent overall efficiency and 97 percent destruction efficiency).

#### Conclusions of Company Comparisons

Both Bostitch and Senco use add-on control devices to comply with VOC control requirements. These facilities share similarities with Duo Fast, including the products manufactured by these companies, the processes used to make these products, and the types of coatings and adhesives used by them. No difference in the process at Duo-Fast was identified which would cause add-on control to be considered technologically or economically infeasible. Due to the similarities between Duo-Fast's operations and those of Bostitch and Senco, RACT for Duo-Fast should include the use of add-on controls.

#### (B) Evaluation of Economic Feasibility of Add-On Control

In 1990, Duo-Fast contracted with Yates & Auberle, a consultant, to determine the cost of add-on controls. Its study was submitted with Duo-Fast's March 2, 1990, comments on the December 27, 1989, proposed Federal RACT rules. This investigation examined the costs of the installation and operation of a thermal oxidizer with a 95 percent effective regenerative heat exchanger. This section includes an evaluation of Duo-Fast's analysis in order to correctly determine the cost-effectiveness of the control system that was investigated, and whether such a control system constitutes RACT.

Duo-Fast obtained cost estimates from Smith Environmental Engineering (Smith) and Reeco. The total capital investment was \$2,195,550 for a Smith system and \$2,832,060 for a Reeco system. However, Duo-Fast incorrectly based its annual reductions on a seven-month basis. Although USEPA does not require gas-fired incinerators to be used in the colder months of the non-ozone season, cost-effectiveness<sup>3</sup> must still be based on the reductions that would occur over 12 months. Cost-effectiveness serves chiefly as a means of comparing control strategies and, therefore, the bases must be consistent to provide for a proper comparison. USEPA has based its cost-effectiveness values, e.g., in the CTGs and support documents for New Source Performance Standards (Section 111 of the Act), on emission reductions resulting from year-round operation of control equipment. It is not meaningful to compare cost-

effectiveness values based on control systems operating for only a portion of the year with cost-effectiveness values based upon full year operation and correspondingly greater emission reductions. Therefore, the cost-effectiveness of any control system must be based on costs and emission reductions for a 12-month, and not a 7-month, period.

In addition, the unit costs for factors contributing to the annualized cost should be consistent with the values obtained from USEPA's guidance document "OAQPS Control Cost Manual Fourth Edition", EPA-450/3-90-006, January 1990 (OAQPS Manual), unless a different value has been documented to be more appropriate. USEPA has corrected Duo-Fast's costs in two steps. The first step was to revise the costs from a seven to a twelve-month basis. The resulting annualized costs were \$745,743 for the Smith system and \$1,076,273 for the Reeco system. The second step was to compare the unit costs used by Duo-Fast to those obtained from the OAQPS Manual. The generally lower unit costs (which cover items such as interest, natural gas, electricity, and labor rates) obtained from the OAQPS Manual were used because Duo-Fast had not adequately justified its costs. Although the natural gas usage rate presented by Duo-Fast appears to be inflated (resulting in higher costs), its usage rates were used in determining annual costs.

As stated previously, Duo-Fast's cost-effectiveness values were based on the emission reductions that would result from operating the control system for seven months. The emission reductions were revised, to reflect operating the control system for 12 months, by multiplying the total annual emissions (324 tons VOC) by an overall control requirement of 81 percent. This results in an annual emission reduction of 262.1 tons of VOC.

The cost-effectiveness calculated by Duo-Fast, for seven months operation, is \$4,146/ton for the Smith system and \$5,785/ton for the Reeco system. The cost-effectiveness, based on Duo-Fast's unit costs and 12 months operation, is \$2,845 for the Smith system and \$4,106 for the Reeco system; and the cost-effectiveness, based on 12 months operation and unit costs obtained from the OAQPS Manual, is \$2,370/ton for the Smith system and \$3,222/ton for the Reeco system. Therefore, Duo-Fast should be able to comply with the MMPP requirements for \$2,370/ton, which is consistent with RACT. A more detailed discussion of this analysis is contained in the June 1992 "RACT Analysis for Duo-Fast Corporation."

The CTGs developed by USEPA contain the presumptive norm for RACT for the corresponding source categories. In each CTG, USEPA evaluates various control technologies, including add-on control. These analyses include a determination of the cost-effectiveness of using add-on controls to achieve RACT. As stated previously, Duo-Fast's operations are covered by the MMPP CTG. Because Duo-Fast claims that the cost-effectiveness of add-on controls is beyond (more costly than) what RACT requires, USEPA compared the cost-effectiveness values reported in the MMPP CTG with those determined for Duo-Fast. One of the control techniques considered in this CTG is incineration. The MMPP CTG specifies incineration cost-effectiveness values of greater than \$6,000/ton. The cost-effectiveness value established by USEPA for control of Duo-Fast's power driven fastener coating operations is \$2,370/ton. This is well below (that is, less costly than) values cited in the MMPP CTG for the application of incinerators and is therefore clearly consistent with RACT.

#### (C) Compliance Date

USEPA is proposing a compliance period of one year from the date of final action on reconsideration, for Duo-Fast to comply with the MMPP coating limits in the federally promulgated RACT rules for the Chicago area. A one-year period is consistent with the amount of time allowed sources to comply with more stringent emission limits in the federally promulgated RACT rules.

#### III. Summary and Conclusions

The USEPA is proposing that RACT for Duo-Fast's power driven fastener coating operations is the MMPP coating limits in the federally promulgated RACT rules for the Chicago area. USEPA is also proposing that Duo-Fast will have one year from publication of the notice of final rulemaking to comply with the MMPP emission limits. Finally, USEPA is proposing to withdraw the March 3, 1992, stay.

Public comment is solicited on this proposal for Duo-Fast's facility. Public comments received by the date shown above will be considered in the development of USEPA's final rule. Any hearing, if requested, will be strictly limited to the subject of this proposal, the scope of which is discussed in the proposal.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a

<sup>3</sup> Cost-effectiveness is the annualized cost of control divided by the annual reductions (resulting from the control). Cost-effectiveness is typically expressed in dollars per ton (\$/ton).

significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This action involves only one source, Duo-Fast Corporation. Therefore, USEPA certifies that this RACT promulgation does not have a significant impact on a substantial number of small entities.

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: November 10, 1994.

Carol M. Browner,  
Administrator.

For the reasons set forth in the preamble, it is proposed that part 52, chapter I, title 40 of the Code of Federal Regulations be amended as follows:

#### PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

#### Subpart O—Illinois

2. Section 52.741 is amended by revising paragraph (e)(5), removing and reserving paragraph (z)(3), and adding paragraph (e)(11) to read as follows:  
§ 52.741 Control Strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

(e) \* \* \*

(5) Compliance schedule. Except as specified in paragraphs (e)(7) and (e)(11) of this section, every owner or operator of a coating line (of a type included within paragraph (e)(1)(i) of this section) shall comply with the requirements of paragraph (e)(1), (e)(2) or (e)(3) of this section and paragraph (e)(6) of this section in accordance with the appropriate compliance schedule as specified in paragraph (e)(5)(i), (ii), (iii) or (iv) of this section.

(i) No owner or operator of a coating line which is exempt from the limitations of paragraph (e)(1) of this section because of the criteria in paragraph (e)(3)(i) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraph (e)(6)(i) of this section. Wood furniture coating lines are not subject to paragraph (e)(6)(i) of this section.

(ii) No owner or operator of a coating line complying by means of paragraph (e)(1)(i) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(i) and (e)(6)(ii) of this section.

(iii) No owner or operator of a coating line complying by means of paragraph (e)(1)(ii) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(ii) and (e)(6)(iii) of this section.

(iv) No owner or operator of a coating line complying by means of paragraph (e)(2) of this section shall operate said coating line on or after July 1, 1991, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(2) and (e)(6)(iv) of this section.

(11) Compliance schedule for Duo-Fast Corporation. Notwithstanding any other provision of this subpart, the date by which the coating operations at Duo-Fast Corporation's Franklin Park, Illinois, manufacturing facility must comply with the miscellaneous metal parts and products coating limits, codified at 40 CFR 52.741(e)(1)(i)(j), is specified in this paragraph (e)(11). Compliance with the requirements of paragraph (e)(1), (e)(2), or (e)(3) of this section and paragraph (e)(6) of this section must be in accordance with the appropriate compliance schedule as specified in paragraph (e)(11)(i), (ii), (iii), or (iv) of this section.

(i) No owner or operator of a coating line which is exempt from the limitations of paragraph (e)(1) of this section because of the criteria in paragraph (e)(3)(i) of this section shall operate said coating line on or after one year after date of publication of the final rule in the **Federal Register**, unless the owner or operator has complied with, and continues to comply with, paragraph (e)(6)(i) of this section.

(ii) No owner or operator of a coating line complying by means of paragraph (e)(1)(i) of this section shall operate said coating line on or after one year after date of publication of the final rule in the **Federal Register**, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(i) and (e)(6)(ii) of this section.

(iii) No owner or operator of a coating line complying by means of paragraph (e)(1)(ii) of this section shall operate said coating line on or after one year after date of publication of the final rule in the **Federal Register**, unless the

owner or operator has complied with, and continues to comply with, paragraphs (e)(1)(ii) and (e)(6)(iii) of this section.

(iv) No owner or operator of a coating line complying by means of paragraph (e)(2) of this section shall operate said coating line on or after one year after date of publication of the final rule in the **Federal Register**, unless the owner or operator has complied with, and continues to comply with, paragraphs (e)(2) and (e)(6)(iv) of this section.

\* \* \* \* \*

[FR Doc. 94-28547 Filed 11-17-94; 8:45 am]  
BILLING CODE 6560-50-P

#### DEPARTMENT OF TRANSPORTATION

##### Maritime Administration

##### 46 CFR Parts 345 and 346

[Docket No. 155]

RIN No. 2133-AB15

#### Federal Port Controllers; Clarification of the Event That Allows the Activation of the Federal Port Controller Service Agreements

AGENCY: Maritime Administration,  
Department of Transportation  
ACTION: Proposed rule.

**SUMMARY:** These proposed amendments to the regulations of the Maritime Administration (MARAD) concern control and utilization of ports. The Federal Port Controllers regulations (46 CFR Part 346) would be amended to state that standby service agreements between the United States of America, acting through MARAD, and port authorities or private corporations may, at the discretion of MARAD, become operational upon deployment of the Armed Forces of the United States, or other requirements of the nation's defense. These amendments would allow the activation of the standby service agreements earlier in most emergencies. They would make the timing of the Federal Port Controller activation consistent with that in MARAD's regulations at 46 CFR Part 340 governing priority use and allocation of shipping services, containers and chassis and port facilities. The proposed conforming amendment to 46 CFR Part 345 redefines "Federal Port Controller" to harmonize with the change in Part 346.

**DATES:** Comments on this proposed rule must be received in writing by January 17, 1994.

**ADDRESSES:** Send comments to the Secretary, Maritime Administration,

Room 7210, 400 Seventh Street, SW, Washington, DC. 20590. Five copies of comments are requested but not required. All comments will be made available for inspection during normal business hours at the above address. Respondents wishing MARAD to acknowledge receipt of comments should enclose a stamped self-addressed envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** John Pisani, Director, Office of Ports and Domestic Shipping, Maritime Administration, Washington, DC 20590. Telephone: (202) 366-4357.

**SUPPLEMENTARY INFORMATION:** The need for these amendments to MARAD's regulations at 46 CFR Subchapter I-B arises because the event that activates the Federal Port Controller service agreements is not consistent with the event that activates the Priority Use and Allocation of Shipping Services, Containers, and Port Facilities and Services regulations (46 CFR Part 340).

Under non-emergency conditions, the public ports of the United States are administered under a wide variety of authorities, all of which emanate directly or indirectly from their respective state governments. The wide variance in their responsibilities, jurisdictions, operations, and managements reflects the differences of the various governing bodies. The various contingency Federal procedures are intended to assert reasonable, uniform, limited Federal administration over the otherwise diverse U.S. network of civil, public ports in an emergency which affects the national interest. The procedures are set forth under three interdependent documents:

1. Special inter-agency coordination required under emergency circumstances is established through the *Memorandum of Understanding on Port Readiness*. These procedures are in effect at all times.

2. Use of real port property and related services are assured through the above-mentioned regulations at 46 CFR Part 340, addressing the priority use and allocation of port facilities, as well as shipping services and containers and chassis. These procedures can be put into effect in the event of the deployment of the Armed Forces of the United States or other requirements of the nation's defense.

3. Limited Federal administration of the U.S. network of civil, public ports is achieved by the standby Federal Port Controller procedures as set forth in 46 CFR Part 346. At present, these procedures can only be activated upon the declaration of war or national emergency.

The present disparity with respect to the event that triggers the inception of contingency Federal procedures under 46 CFR Parts 340 and 346, respectively, can create confusion. Good order dictates that, in an emergency, all of the safeguards for national defense should be available at the same time, ideally at the lowest level of an emergency consistent with a pressing national interest. The present 46 CFR Part 340 procedures are not triggered by the Presidential declaration of an emergency because of the potentiality of adverse delay. Events during Operation Desert Shield/Desert Storm show that, without the deployment mechanism, the government would not have had the authority to obtain needed facilities in a timely manner.

In an emergency, at the local port level, the official named to become the Federal Port Controller is a key Maritime Administration official. He or she represents the Maritime Administration in the execution of Memorandum of Understanding on Port Readiness. In the event that it becomes necessary to exercise the service priority or allocation authorities of 46 CFR Part 340, the Federal Port Controller could act as the local Federal agent.

Obviously, if it is impossible to activate a Federal Port Controller because an emergency has not been declared, it would also be impossible to use the services of the Federal Port Controller to assist in the allocation of priority of service requirements which may be needed during a deployment.

It is unlikely that post cold war emergencies will result in the broad utilization of emergency declarations (as was evident in Operation Desert Shield/Storm). If the Federal Port Controller activation provision is not changed, the Government's Federal Port Controller emergency port management program will be unable to function, except as a training program. The change will allow (but not necessitate) activation of selected contracts without an emergency if a deployment is in progress.

#### Rulemaking Analyses and Notices

##### *Executive Order 12866 (Regulatory Planning and Review)*

This rulemaking has been reviewed under Executive Order 12866 (Regulatory Planning and Review). It is not considered to be an economically significant regulatory action under Section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the

economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule would not significantly affect other Federal agencies; would not materially alter any budgetary impacts; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities or the principles set forth in E.O. 12866, and has been determined to be a nonsignificant rule under the Department's Regulatory Policies and Procedures. Accordingly, it is not considered to be a significant regulatory action under E.O. 12866.

This rule did not require review by the Office of Management and Budget (OMB) under Executive Order 12866.

#### *Federalism*

MARAD has analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### *Regulatory Flexibility Act*

MARAD certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

#### *Environmental Assessment*

MARAD has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

#### *Paperwork Reduction Act*

This rulemaking contains no new reporting requirement that is subject to OMB approval under 5 CFR Part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### **List of Subjects in 46 CFR Parts 345 and 346**

Freight, Harbors, Maritime carriers, and National defense.

Accordingly, MARAD proposes to amend 46 CFR Parts 345 and 346 as follows:

#### **PART 345—[AMENDED]**

1. The authority citation for Part 345 would be revised to read as follows:

Authority: The Defense Production Act of 1950, as amended (50 App. U.S.C. 2061 *et seq.*); the Federal Civil Defense Act of 1950, as amended (50 App. U.S.C. 2251 *et seq.*); E.O. 12656, sec. 1401(7) (53 FR 47491, 3 CFR 1988 Comp.); DOT order 1400.7D.

**Sec. 1 [Amended]**

2. Section 1 of part 345, paragraph (c) would be amended by removing the words "in time of national emergency", and inserting in their place the words "upon deployment of the Armed Forces of the United States, or other requirements of the nation's defense".

**PART 346—[AMENDED]**

1. The authority citation for Part 346 would be revised to read as follows:

**Authority:** The Defense Production Act of 1950, as amended (50 App. U.S.C. 2061 *et seq.*); the Federal Civil Defense Act of 1950, as amended (50 App. U.S.C. 2251 *et seq.*); E.O. 12656, sec. 1401(7) (53 FR 47491, 3 CFR 1988 Comp.); DOT order 1400.7D.

**Sec. 2 [Amended]**

2. Section 2 of part 346, Definitions, would be amended in paragraph (b), *Federal Port Controller*, by removing the words "in time of war or national emergency", and inserting in their place the words "upon deployment of the Armed Forces of the United States, or other requirements of the nation's defense."

3. Section 3 of part 346, would be revised to read as follows:

**Sec. 3 Standby Agreements.**

The Director, NSA, may negotiate the standard form of service agreement, specified in section 4, with port authorities on a standby basis, prior to the deployment of the Armed Forces of the United States, or other requirements of the nation's defense. In such cases, the contractor accepts the obligation to maintain a qualified incumbent in the position specified in Article 1 of the service agreement and to be prepared to furnish the resources specified in Articles 4 and 5. An agreement executed on a standby basis may become operational upon the deployment of the Armed Forces of the United States, or other requirements of the nation's defense. An agreement executed after the deployment of the Armed Forces of the United States, or other requirements of the nation's defense may be operational upon execution.

**Sec. 4 [Amended]**

4. Section 4 of part 346, Service agreements, would be amended as follows:

a. In Article 4(a), by removing the words "war effort or declared national emergency", and inserting in their place the words "deployment of the Armed Forces of the United States, or other requirements of the nation's defense".

b. In Article 12, in paragraphs (b)(1) and (b)(2), by removing, in each

paragraph, the words "period of war or national emergency", and inserting in their place the words "deployment of the Armed Forces of the United States, or other requirements of the nation's defense".

Dated: November 14, 1994.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 94-28468 Filed 11-17-94; 8:45 am]

BILLING CODE 4910-81-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 94-127, RM-8537]

### Radio Broadcasting Services; Wright City, OK

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Texarkana Broadcasting, Incorporated seeking the allotment of Channel 277A to Wright City, OK, as the community's first local aural transmission service. Channel 277A can be allotted to Wright City in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.7 kilometers (0.5 miles) southeast, at coordinates 34-03-23 North Latitude and 94-59-41 West Longitude, to avoid a short-spacing to Station KTFX, Channel 277C, Tulsa, Oklahoma.

**DATES:** Comments must be filed on or before January 5, 1995 and reply comments on or before January 20, 1995.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William J. Pennington, III, Esq., 5519 Rockingham Road-East, Greensboro, NC 27407 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94-127, adopted November 3, 1994, and released November 14, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the

FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, D.C. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-28395 Filed 11-17-94; 8:45 am]

BILLING CODE 6712-01-F

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 225

RIN 2130-AA58

[FRA Docket No. RAR-4, Notice No. 8]

### Railroad Accident Reporting

**AGENCY:** Federal Railroad Administration (FRA).

**ACTION:** Notice of public regulatory conference and extension of comment period.

**SUMMARY:** FRA is scheduling a public regulatory conference to further discuss issues related to its notice of proposed rulemaking on railroad accident reporting. This public regulatory conference is scheduled for January 9-13, 1995, in Sacramento, California. In order to assimilate the information discussed at this public regulatory conference, FRA is extending the comment period on its notice of proposed rulemaking (NPRM) to amend the railroad accident reporting regulations to February 10, 1995.

**DATES:** (1) *Written Comments:* Written comments must be received no later than February 10, 1995. Comments

received after that date will be considered to the extent practicable without incurring additional expense or delay.

(2) *Public Regulatory Conference:* A public regulatory conference to discuss particular issues raised in the NPRM will be held January 9-13, 1995, in Sacramento, California.

**ADDRESSES:** (1) *Written Comments:* Written comments should identify the docket number and the notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Room 8201, Washington, DC 20590. Persons desiring to be notified that their written comments have been received by FRA should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the card to the addressee. Written comments will be available for examination, both before and after the closing date for comments, during regular business hours in room 8201 of the Nassif Building at the above address.

(2) *Public Regulatory Conference:* The public regulatory conference will be held at the following location and date:

Location: Executive Inn, 2030 Arden Way, Sacramento, California (telephone 800-793-2030).

Date: January 9-13, 1995.

Time: beginning at 9:00 a.m. each day.

Persons desiring to participate in the public regulatory conference should notify the Docket Clerk by telephone (202-366-0635) or by writing to: Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Room 8201, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:**

Marina C. Appleton, Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-0628); or Robert Finkelstein, Chief, Systems Support Division, Office of Safety Analysis, Office of Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202-366-2760).

**SUPPLEMENTARY INFORMATION:** Following publication of the NPRM in the Federal Register (59 FR 42880), FRA held a series of public hearings to allow

interested parties the opportunity to comment on specific issues addressed in the NPRM. Public hearings were held in Washington, DC on October 5-6; in Kansas City, Missouri on October 19; and in Portland, Oregon on November 3. These hearings were attended by several railroads, organizations representing railroads, labor organizations, and a state governmental agency.

Most of the interested parties at the hearings requested that additional public hearings should be scheduled in order to address specific issues of concern. FRA believes it would be beneficial to hold a public regulatory conference so that further discussion and exchange of ideas is facilitated by all interested groups. FRA plans to publish an agenda for the public regulatory conference in the *Federal Register* as soon as practicable.

Issued in Washington, DC, on November 15, 1994.

S. Mark Lindsey,

Acting Federal Railroad Administrator.

[FR Doc. 94-28589 Filed 11-17-94; 8:45 am]

BILLING CODE 4910-06-P

# Notices

Federal Register

Vol. 59, No. 222

Friday, November 18, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 94-125-1]

#### Determination of Nonregulated Status for Additional Calgene, Inc., Genetically Engineered FLAVR SAVR™ Tomato Lines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

**SUMMARY:** The Animal and Plant Health Inspection Service is announcing that it has added nine additional genetically engineered tomato lines to those subject to its October 19, 1992, interpretive ruling for FLAVR SAVR™ tomatoes, that the subject FLAVR SAVR™ lines need no longer be regulated. The effect of this action is that nine additional delayed softening tomato lines, which have been modified by the incorporation of genetic material described by Calgene, Inc., in its initial request for an interpretive ruling, will no longer be subject to regulation under 7 CFR part 340.

**FOR FURTHER INFORMATION CONTACT:** Dr. Keith Reding, Biotechnologist; Biotechnology, Biologics, and Environmental Protection; APHIS, USDA, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8761.

**SUPPLEMENTARY INFORMATION:** On October 19, 1992, the Animal and Plant Health Inspection Service (APHIS) published in the *Federal Register* (57 FR 47608-47616, Docket No. 92-087-2) a notice announcing the issuance of an interpretive ruling that previously field tested lines of the Calgene, Inc., FLAVR SAVR™ tomato do not present a plant pest risk and are not regulated articles under the regulations contained in 7 CFR part 340. This action was in response to a petition submitted by

Calgene seeking a determination from APHIS that its FLAVR SAVR™ tomato no longer be deemed a regulated article, based on an absence of plant pest risk. The effect of the action was that previously field tested lines of the FLAVR SAVR™ tomato and their progeny would no longer be regulated under these regulations.

FLAVR SAVR™ tomatoes were defined by Calgene in its initial petition to include any tomatoes transformed with one of seven identified plasmid vectors that all carry an antisense copy of the tomato polygalacturonase gene and a bacterial neomycin phosphotransferase gene with associated regulatory sequences. Calgene's initial request to APHIS in 1992 was for a determination pertaining to all FLAVR SAVR™ transformants produced in tomato using any one of the seven plasmid vectors. Calgene indicated in its petition that data provided to the Agency was representative of the data gathered for all lines tested up to that time. The initial determination announced by APHIS on October 19, 1992, only applied to those lines that had already been field tested. However, APHIS indicated that new lines were likely to exhibit properties similar to those of lines already field tested under permit. The determination also allowed for cross-breeding of the identified FLAVR SAVR™ tomato lines with any other lines or cultivars of tomato without permit. One additional FLAVR SAVR™ tomato line was added to the original determination on October 3, 1994 (59 FR 50220, Docket No. 94-096-1).

The nine additional FLAVR SAVR™ tomato lines that are the subject of this notice were constructed using the plasmid PCGN4109, which contains the promoter/terminator from either PCGN1557 or PCGN1578. These latter two vectors were among the seven included in Calgene's initial petition to APHIS. In our determination on October 19, 1992, the lines using these vectors were not deregulated because they had not been field tested. These lines have been field tested in accordance with APHIS regulations at 7 CFR part 340, and data provided to APHIS indicate that the new transformant lines, produced in a manner identical to the earlier transformant lines, behave similarly to those earlier FLAVR SAVR™ tomato lines to which the

determination initially applied. Reports from field trials and other data indicate that the new tomato lines grow normally, exhibit the expected morphological, reproductive, and physiological properties, and do not have unexpected pest or disease susceptibility or symptoms. Therefore, the APHIS determination of nonregulated status for previously field tested FLAVR SAVR™ tomato lines of October 19, 1992, applies as well to the new transformed lines.

Done in Washington, DC, this 14th day of November 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-28540 Filed 11-17-94; 8:45 am]

BILLING CODE 3410-34-P

[Docket No. 94-118-1]

#### Availability of List of U.S. Veterinary Biological Product and Establishment Licenses and U.S. Veterinary Biological Product Permits Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

**SUMMARY:** This notice pertains to veterinary biological product and establishment licenses and veterinary biological product permits that were issued, suspended, revoked, or terminated by the Animal and Plant Health Inspection Service during the month of September 1994. These actions have been taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act. The purpose of this notice is to inform interested persons of the availability of a list of these actions and advise interested persons that they may request to be placed on a mailing list to receive the list.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lynn Thomas, Program Assistant, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245. For a copy of this month's list, or to be placed on the mailing list, write to Ms. Thomas at the above address.

**SUPPLEMENTARY INFORMATION:** The regulations in 9 CFR part 102, "Licenses For Biological Products," require that

every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

The regulations in 9 CFR part 104, "Permits for Biological Products," require that each person importing biological products shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product Permit. The regulations set forth the procedures for applying for a permit, the criteria for determining whether a permit shall be issued, and the form of the permit.

The regulations in 9 CFR parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses, U.S. Veterinary Biologics Establishment Licenses, and U.S. Veterinary Biological Product Permits.

Each month, the Veterinary Biologics section of Biotechnology, Biologics, and Environmental Protection prepares a list of licenses and permits that have been issued, suspended, revoked, or terminated. This notice announces the availability of the list for the month of September 1994. The monthly list is also mailed on a regular basis to interested persons. To be placed on the mailing list you may call or write the person designated under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 14th day of November 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-28539 Filed 11-17-94; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF COMMERCE

### Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for

collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census Test - Integrated Coverage Measurement (ICM) Person Interview.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 8,237 hours.

Number of Respondents: 22,411 hours.

Avg Hours Per Response: 18 minutes.

Needs and Uses: Prompted by the need to improve estimation techniques during the decennial census, the Census Bureau has developed the Integrated Coverage Measurement (ICM) approach. This approach will be tested during the 1995 Census Test. The ICM approach will utilize a separately sampled group of blocks within the 1995 Census Test sites which will be independently listed before the census test is conducted. After the census test is conducted, reinterviews (the ICM person interview) will be conducted at the same housing units that were previously independently listed to reconcile differences between the independent listing and the address list resulting from the census test. This reconciliation will allow us to measure our coverage of persons in missed housing units and coverage of persons missed within housing units enumerated in the census test. The independent listing phase of the ICM test is scheduled to begin January 3, 1995 and was approved under OMB number 0607-0794. This new request is for clearance of the next phase of the ICM approach—the person interview. The ICM approach supports one of the 1995 Census Test objectives—to use sampling and statistical estimation to reduce the differential undercount and census costs. Results of this test of the ICM approach will be applied to the Year 2000 Decennial Census.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Mandatory

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: November 15, 1994.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94-28578 Filed 11-17-94; 8:45 am]

BILLING CODE 3510-07-F

## Bureau of the Census

**Census Advisory Committee (CAC) on the American Indian and Alaska Native Populations, the CAC on the Asian and Pacific Islander Populations, the CAC on the African American Population, and the CAC on the Hispanic Population; Public Meeting**

Pursuant to the Federal Advisory Committee Act (P.L. 92-463 as amended by P.L. 94-409), we are giving notice of a joint meeting followed by separate and jointly held (described below) meetings of the CAC on the American Indian and Alaska Native Populations, the CAC on the Asian and Pacific Islander Populations, the CAC on the African American Population, and the CAC on the Hispanic Population. The joint meeting will convene on December 1-2, 1994 at the Bureau of the Census in the Conference Center, Room 1630, Federal Building 3, Suitland, Maryland 20233.

Each of these Committees is composed of nine members appointed by the Secretary of Commerce. They provide an organized and continuing channel of communication between the communities they represent and the Bureau of the Census on its efforts to reduce the differential undercount in the 2000 census and on ways the census data can be disseminated to maximum usefulness to their communities and other users.

The Committees will draw on past experience with the 1990 census process and procedures, results of evaluations and research studies, and the expertise and insight of its members to provide advice and recommendations during the research and development phase on various topics, and provide advice and recommendations during the design planning and implementation phases of the 2000 census.

The agenda for the December 1 combined meeting is: (1) Introductory remarks by the Director, Bureau of the Census; (2) Collecting data on race and ethnicity; (3) Federal and nonfederal content needs; (4) Joint advisory committee discussion; and (5) Demographic characteristics of race and ethnic populations.

The agendas for the four committees in their separate and jointly held meetings are as follows:

**The CAC on the African American Population:** (1) Elections of chairperson and chairperson-elect; (2) discussion of plenary session topics; and (3) issues in the African American community as they relate to the decennial census.

**The CAC on the American Indian and Alaska Native Populations:** (1) Elections of chairperson and chairperson-elect; (2) discussion of plenary session topics; (3) presentation on American Indian and Alaska Native activities; and (4) issues in the American Indian and Alaska Native communities as they relate to the decennial census.

**The CAC on the Asian and Pacific Islander Populations:** (1) Elections of chairperson and chairperson-elect; (2) discussion of plenary session topics; and (3) issues in the Asian and Pacific Islander communities as they relate to the decennial census.

**The CAC on the Hispanic Population** (1) Elections of chairperson and chairperson-elect; (2) discussion of plenary session topics; and (3) issues in the Hispanic community as they relate to the decennial census.

The agenda for the December 2 combined meeting is: (1) Outreach and promotion, including the 1995 Census Test, cooperative ventures, and 2000 census plans; and (2) sampling and estimation.

The agendas for the four committees in their separate and jointly held meetings are:

**The CAC on the African American Population:** (1) Review of plenary session topics; (2) development and discussion of recommendations; and (3) discussion of agenda items for next meeting.

**The CAC on the American Indian and Alaska Native Populations:** (1) Review of plenary session topics; (2) development and discussion of recommendations; and (3) discussion of agenda items for next meeting.

**The CAC on the Asian and Pacific Islander Populations:** (1) Review of plenary session topics; (2) development and discussion of recommendations; and (3) discussion of agenda items for next meeting.

**The CAC on the Hispanic Population:** (1) Review of plenary session topics; (2) development and discussion of recommendations; and (3) discussion of agenda items for next meeting.

All meetings are open to the public and a brief period is set aside on December 2 for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least three days before the meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau official named below.

Persons wishing additional information regarding these meetings or who wish to submit written statements may contact Ms. Diana Harley, Decennial Management Division, Bureau of the Census, Room 3546, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, DC 20233-7100). Telephone: (301) 763-4275—TDD (301) 763-4056.

Dated: November 14, 1994.

**Martha Farnsworth Riche,**  
Director, Bureau of the Census.

[FR Doc. 94-28533 Filed 11-17-94; 8:45 am]

BILLING CODE 3510-07-P

#### International Trade Administration

[A-357-809; A-351-826; A-428-820 and A-475-814]

#### Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Argentina, Brazil, Germany and Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 18, 1994.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Mary Jenkins, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at (202) 482-4929 and (202) 482-1756, respectively.

#### Postponement

On October 27, 1994, Gulf States Tube Division of Quanex Corporation, the petitioner in the above-referenced investigations, requested that the Department of Commerce postpone its preliminary determinations in these investigations until January 19, 1995. Petitioner requested a postponement of these determinations "due to the complexity of the cases and the inadequacy of the original questionnaire responses." We can find no compelling reasons to deny this request. Therefore, in accordance with section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673b (c)(1)(A)) and 19 CFR 353.15(c), we are postponing the date of the preliminary determinations in these investigations until not later than January 19, 1995 (210 days from the date the petitions were filed).

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: November 7, 1994.

**Barbara R. Stafford,**  
Deputy Assistant Secretary for Investigations.  
[FR Doc. 94-28573 Filed 11-17-94; 8:45 am]  
BILLING CODE 3510-DS-P

[C-351-609]

#### Certain Forged Steel Crankshafts from Brazil: Termination of Suspended Investigation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Suspended Investigation.

**SUMMARY:** The Department of Commerce (the Department) is terminating the suspension agreement as well as the underlying investigation on certain forged steel crankshafts from Brazil because they are no longer of interest to interested parties.

EFFECTIVE DATE: November 18, 1994.

FOR FURTHER INFORMATION CONTACT: Jonathan Freilich or Jean Kemp, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3793.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 28, 1987, the Department published in the *Federal Register* a suspension agreement on certain forged steel crankshafts from Brazil. At the request of the Brazilian government, the Department continued its investigation (52 FR 28177). On October 15, 1987, the Department published in the *Federal Register* its final affirmative countervailing duty determination (52 FR 38254). No interested party has requested a review of this suspension agreement for over four consecutive anniversary months.

On August 4, 1994, the Department published in the *Federal Register* (59 FR 39744) its notice of intent to terminate the suspension agreement as well as the underlying investigation on certain forged steel crankshafts from Brazil. Additionally, as required by 19 CFR 355.25(d)(4)(ii)(1994), the Department served written notice of its intent to terminate the suspension agreement as well as the underlying investigation, on each party listed on

the Department's most current service list.

### Scope of the Order

Imports covered by this order are shipments from Brazil of certain forged steel crankshafts, with a shipping weight of between 40 and 750 pounds, whether machined or unmachined.

### Determination to Terminate

According to 19 CFR 355.25(d)(4)(iii), the Department may terminate a suspended investigation if, by the last day of the fifth annual anniversary month, no interested party objects to our notice of intent to terminate, or requests an administrative review.

We received neither requests for an administrative review nor objections to our notice of intent to terminate the suspension agreement as well as the underlying investigation. Therefore, we have concluded that the suspension agreement as well as the underlying investigation we have concluded that the suspension agreement as well as the underlying investigation covering certain forged steel crankshafts from Brazil are no longer of interest to interested parties, and we are terminating this suspension agreement as well as the underlying investigation, in accordance with 19 CFR § 355.25(d)(4)(iii).

This notice is published in accordance with 19 CFR § 355.25(d)(4)(iii).

Dated: November 9, 1994.

**Roland L. MacDonald,**

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 94-28574 Filed 11-17-94; 8:45 am]

BILLING CODE 3510-DS-P

[C-559-001]

### Certain Refrigeration Compressors From the Republic of Singapore Preliminary Results of Countervailing Duty Administrative Review

**AGENCY:** International Trade Administration/Import Administration/Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative review.

**SUMMARY:** Pursuant to the provisions of section 751 of the Tariff Act of 1930, as amended, and 19 U.S.C. 1675(a)(1)(C), the Department of Commerce is conducting an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. We

preliminarily determine that the signatories have complied with the terms of the suspension agreement during the period April 1, 1992, through March 31, 1993. We invite interested parties to comment on these preliminary results.

**EFFECTIVE DATE:** November 18, 1994.

**FOR FURTHER INFORMATION CONTACT:** Rick Johnson or Art Stern, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-3793.

### SUPPLEMENTARY INFORMATION:

#### Background

On November 30, 1993, the Government of the Republic of Singapore (GOS), Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), and Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS), requested an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore (48 FR 51167, November 7, 1983). We initiated the review, covering the period April 1, 1992, through March 31, 1993, on January 18, 1994 (59 FR 2594). The Department of Commerce (the Department) sent out a questionnaire on January 25, 1994, and received a joint questionnaire response from the GOS, MARIS, and AMS, on March 28, 1994. Subsequently, the Department sent out two supplemental questionnaires, on April 11, 1994, and May 4, 1994, and received joint supplemental questionnaire responses on April 25, 1994, and May 11, 1994, respectively. The Department verified the information provided in these responses, as well as further information submitted by respondent for the record on May 16, 1994, in Singapore from May 18 through May 20, 1994.

The final results of the last administrative review in this case were published on October 9, 1992 (57 FR 46539), which is on file in the Central Records Unit (room B-099 of the Main Commerce Building).

#### Scope of Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. This merchandise is currently classified under *Harmonized Tariff Schedule* (HTS) item number 8414.30.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review period is April 1, 1992 through March 31, 1993, and includes five programs. The review covers one producer and one exporter of the subject merchandise, MARIS and AMS, respectively. These two companies, along with the GOS, are the signatories to the suspension agreement.

Under the terms of the suspension agreement, the GOS agrees to offset completely the amount of the net bounty or grant determined by the Department in this proceeding to exist with respect to the subject merchandise. The offset entails the collection by the GOS of an export charge applicable to the subject merchandise exported on or after the effective date of the agreement. See *Certain Refrigeration Compressors from the Republic of Singapore: Suspension of Countervailing Duty Investigation*, 48 FR 51167, 51170 (November 7, 1983).

#### Analysis of Programs

##### (1) The Economic Expansion Incentives Act—Part VI

The Production for Export Programme under Part VI of the Economic Expansion Incentives Act allows a 90-percent tax exemption on a company's export profit if the GOS designates a company as an export enterprise. In the investigation, the Department preliminarily found this program to be countervailable because "this tax exemption is provided only to certified export enterprises." See *Preliminary Affirmative Countervailing Duty Determination: Certain Refrigeration Compressors from the Republic of Singapore*, 48 FR 39109, 39110 (August 29, 1983). MARIS is designated as an export enterprise and used this tax exemption during the period of review. AMS was not designated an export enterprise under Part VI of the Economic Expansion Incentives Act for the period of review.

According to the Export Enterprise Certificate awarded to MARIS in a letter dated May 12, 1981, MARIS is to receive this benefit on the production of compressors, electrical parts and accessories for refrigerators, and plastic refrigerators. At verification, we found that the benefit claimed by MARIS to the GOS has also been applied to the export sales of other products outside the scope of this review, including casting blocks, bearings, and some casting parts for forklifts. To calculate the benefit, we divided the tax savings claimed by MARIS under this program by the f.o.b. value of total exports of products receiving the benefit, for the period of review.

MARIS' response to the Department's countervailing duty questionnaire for this review indicated that MARIS deducted export charges levied pursuant to the suspension agreement in arriving at an adjusted profit figure, which was then used to calculate exempt export profit for the review period. In the eighth administrative review, the Department determined that the amount of the export charge deduction must be added "back to MARIS' export profit in calculating MARIS' tax savings in order to offset the deduction of the export charges in the review period." See *Preliminary Results of Countervailing Duty Review: Certain Refrigeration Compressors from Singapore*, 57 FR 31175 (July 14, 1992), affirmed in *Final Results of Countervailing Duty Review: Certain Refrigeration Compressors from Singapore*, 57 FR 46539 (October 9, 1992). Therefore, in calculating the benefit from this program, we have added back this deduction. On this basis, we preliminarily determine the benefit from this program during the review period to be 2.98 percent of the f.o.b. value of the merchandise.

#### (2) Finance & Treasury Center (FTC)

The Finance & Treasury Center Program allows for the taxation at a concessionary rate of 10 percent on certain income earned by companies providing treasury, investment, or financial services in Singapore for their subsidiaries/affiliates outside Singapore. The FTC program under Section 43E of the Singapore Income Tax Act has been in effect since April 1, 1989 (i.e. Singapore tax "year of assessment 1991"). At verification, the Department confirmed that 10 companies currently participate in the program, including AMS. Every company which has applied to the program has been accepted. MARIS did not participate in the program for the period of review. This is the first time that the Department has examined this program.

When receipt of benefits under a program is not contingent upon exportation, the Department must determine whether the program is specific to an enterprise or industry, or group of enterprises or industries. Under the specificity analysis, the Department examines both whether a government program is limited by law to a specific enterprise or industry, or group thereof (i.e., *de jure* specificity) and whether the government program is in fact limited to a specific enterprise or industry, or group thereof (i.e., *de facto* specificity). See 19 U.S.C. § 1677(5)(B). In section 355.43(b)(2) of the Department's proposed regulations

(Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366 (May 31, 1989) (*Proposed Rules*)), the Department has set forth factors which may be considered in determining whether there is specificity:

(i) The extent to which a government acts to limit the availability of a program;

(ii) The number of enterprises, industries, or groups thereof that actually use a program;

(iii) Whether there are dominant users of a program, or whether certain enterprises, industries, or groups thereof receive disproportionately large benefits under a program; and

(iv) The extent to which a government exercises discretion in conferring benefits under a program.

In *Final Negative Countervailing Duty Determination: Certain Granite Products from Italy*, 53 FR 27197, 27200 (July 19, 1988), the Department determined that benefits received under a program *de jure* limited to small- and medium-sized firms were not countervailable, as those were received by companies in virtually every productive sector of the country. In this case, we are presented with an analogous situation regarding the extent to which the GOS acts to limit the availability of the FTC program. According to the May 11, 1994, supplemental questionnaire response, "the FTC program is open for application to any reputable multinational corporation which intends to establish group treasury operations in Singapore." Petitioner argues that benefits under this program are thus *de jure* specific, "in that they are limited by law to only certain multinational corporations." The Department notes that while FTC benefits are *de jure* restricted to multinational corporations (MNCs), the thousands of MNCs in Singapore allow for a large number of potential beneficiaries in numerous industry sectors. Therefore, the FTC program does not provide countervailable benefits on the basis of *de jure* specificity.

However, according to the May 11, 1994, supplementary questionnaire response, under the terms of the GOS letter granting AMS approval for FTC status, the applicant "is required to meet certain minimum levels in the number of professional staff, total operating costs, and scale of treasury activities." In respondent's own words, this requirement has effectively limited the availability of the FTC program to a "small number of multinational corporations (having) sufficiently large operations in Singapore to support the

establishment of an expensive treasury support office. . . ." See Supplemental Questionnaire Response, May 11, 1994, p. 11. Thus, the GOS has in fact acted to limit the number of companies which can avail themselves of the FTC program.

Regarding the number of enterprises, industries, or groups thereof that actually use the FTC program, respondents note that under Singapore law, benefits for this program are available to all companies providing treasury, investment, or financial services in Singapore for their subsidiaries/affiliates outside Singapore. However, the Court of International Trade has noted that the critical focus of a determination of specificity must be an analysis of whether a benefit "has been bestowed on a discrete class of grantees despite nominal availability, program grouping, or the absolute number of grantee companies or industries." *Roses, Inc., California Floral Trade Council and Floral Trade Council v. United States*, 743 F. Supp. 870, 881 (1990). The fact that only 10 companies, representing five industries, are using a program which is nominally available to thousands of multinational corporations and has been in effect for five years, is strong evidence that only a small group of enterprises currently receives benefit under the FTC program.

Concerning whether there are dominant users of the FTC program, or whether certain enterprises, industries, or groups thereof receive disproportionately large benefits under this program, the May 11, 1994, supplemental questionnaire response states that since the benefit is in the form of a concessionary tax rate, the benefit derived by the companies "depends on the income derived from the conduct of treasury activities and varies from company to company." Since there is no requirement in Singapore for a company to report its benefit under the program to the GOS, the GOS had no information regarding the level of benefits actually received by each participating company.

Finally, regarding the extent to which a government exercises discretion in conferring benefits under the FTC program, the April 26, 1994, supplemental questionnaire response states that the "Singapore Government has no discretion in administering this program." However, the April 26, 1994, supplemental questionnaire response also states that "the FTC award is granted for a period of 5 to 10 years, with longer awards granted for applicants who commit more manpower and financial resources to the FTC operations." Therefore, it is apparent

from the response that the GOS may exercise discretion in determining the length of the awards based on the ability of the applicant company to commit substantial manpower and financial resources to the FTC operations. In the case of AMS, benefits have been granted for the minimum five-year period.

Since only a small group of enterprises, representing only five industries, are using the FTC program, the Department preliminarily determines that this program is *de facto* specific, and is therefore countervailable. Because it is probable that participation in the FTC program by MNCs in Singapore could change over time, in future reviews we may re-examine the circumstances which have led the Department to find the program *de facto* specific, should any new information about the program's specificity arise.

To calculate the benefit, we divided the tax savings attributable to the subject merchandise under this program by the value of all AMS product sales for the period of review. On this basis, we preliminarily determine the benefit from this program during the review period to be 0.02% percent of the f.o.b. value of the merchandise.

### (3) The Investment Allowance Program

The Investment Allowance Program under Part X of the Economic Expansion Incentives Act provides tax allowances for investment in automated/mechanized systems. The program is available to companies engaged in the manufacturing of any product, the provision of services, or any of a wide variety of additional activities. AMS has qualified for this program for the period of review. MARIS has not qualified for this program for the period of review.

In *Certain Textile Mill Products and Apparel from Singapore: Final Negative Countervailing Duty Determination*, 50 FR 9840-42 (March 12, 1985), the Department verified that the Investment Allowance program was not limited, either *de jure* or *de facto*, to any specific enterprise or industry and determined that the program did not constitute a bounty or grant. At verification, we found nothing to suggest that the operation of the program has changed since 1985. We noted that thousands of companies in numerous industries have qualified for this program. Therefore, we preliminarily determine that the Investment Allowance program is not countervailable. Also, the Department confirmed at verification that the investment allowance has been granted with respect to automated/mechanized systems in a warehouse through which only merchandise other than subject

merchandise passes, and so was not used by AMS for the production or sale of subject merchandise.

### (4) Technical Assistance Fees/Royalty Payments

Under Part IX of the Economic Expansion Incentives Act, payment by Singaporean companies of license, royalty, and technical assistance fees to offshore companies is exempted from withholding tax in Singapore. MARIS receives tax exempt treatment for its payment of technical assistance fees to its Japanese parent and to another related party in Japan. At verification, the Department found that 129 companies in numerous manufacturing sectors participate in the program. AMS did not use this program during the period of review.

Petitioner argues that the program provides an economic benefit to users because, absent the program's tax exemption, foreign licensors would charge Singaporean companies higher technical assistance fees. However, petitioner has provided no evidence for the record to support this argument.

Petitioner also points out that the certificate granting MARIS status under the program suggests that benefits are limited to companies receiving export incentives. They also allege that the technical assistance fee program may be *de jure* specific, because it is limited to companies that pay certain fees to foreign entities. However, petitioners submitted no evidence that the program is related to exports, or that participation in the technical assistance fee program is contingent upon the use of any export incentive program. Also, the requirement that a company must have dealings with a "non-resident person" does not impose any real limitation on the number and variety of industries participating in the program.

Moreover, in past administrative reviews, the Department has reviewed technical assistance fees paid by MARIS, and has determined that the payments were not excessive (*Certain Refrigeration Compressors from the Republic of Singapore: Suspension of Countervailing Duty Investigation*, 48 FR 51167, 51168 (November 7, 1983)) and were not used to hide the company's profitability by artificially reducing their tax liability (*Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Administrative Review of Suspension Agreement*, 50 FR 30494 (July 26, 1985)). Thus, the payment of these fees did not provide a countervailable benefit to MARIS by allowing the company to lower its income tax

liability by lowering the profit it reports to the GOS.

Furthermore, the Department has noted that these payments were "normal commercial transactions between a parent company and its subsidiary," and that the Department had "no evidence that transfers of funds to MARIS from its parent companies represent(ed) anything other than normal commercial transactions" (*Certain Refrigeration Compressors from the Republic of Singapore: Preliminary Results of Countervailing Duty Administrative Review*, 51 FR 37055 (October 17, 1986), affirmed in *Certain Refrigeration Compressors from Singapore, Final Results of Countervailing Duty Administrative Review*, 52 FR 849 (January 9, 1987)). The Department also confirmed that the payments were thoroughly reviewed by the GOS for compliance with the program (*Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review*, 53 FR 25648 (July 8, 1988)).

Finally, in the preliminary affirmative countervailing duty determination of the investigation, the Department noted that "Singapore law provides that the licensor, not the licensee, is otherwise liable for taxes owed on such payments." See *Preliminary Affirmative Countervailing Duty Determination; Certain Refrigeration Compressors from the Republic of Singapore*, 48 FR 39109 (August 29, 1983). There is no evidence to suggest that MARIS' tax exemptions for technical assistance fees are accrued any differently now than how they were accrued in past reviews where the Department found them to be non-countervailable. Therefore, we preliminarily determine that MARIS has not received any countervailable benefits under this program.

### (5) Financing through the Monetary Authority of Singapore

Under the terms of the suspension agreement MARIS and AMS agreed not to apply for or receive any financing provided by the rediscount facility of the Monetary Authority of Singapore for shipments of the subject merchandise to the United States. We determined during the review that neither MARIS nor AMS received any financing through the Monetary Authority of Singapore on the subject merchandise exported to the United States during the review period. Therefore, we preliminarily determine that both companies have complied with this clause of the agreement.

### Preliminary Results of Review

The suspension agreement states that the GOS will offset completely with an export charge the net bounty or grant calculated by the Department. As a result of our review, we preliminarily determine that the signatories have complied with the terms of the suspension agreement, including the payment of the provisional export charges in effect for the period April 1, 1992 through March 31, 1993. We also preliminarily determine the net bounty or grant to be 3.00% of the f.o.b. value of the merchandise for the April 1, 1992 through March 31, 1993 review period. From April 1, 1992, through October 1, 1992, a provisional export charge rate of 4.05% was in effect, and from October 2, 1992, through March 31, 1993, a rate of 5.52% was in effect.

Following the methodology outlined in section B.4 of the agreement, the Department preliminarily determines that, for the April 1, 1992, through October 1, 1992, portion of the review period, and for the October 2, 1992, through March 31, 1993, portion of the review period, negative adjustments may be made to the provisional export charge rates in effect. The adjustments will equal the difference between the provisional rates in effect during the review period and the rate determined in this review, plus interest. These rates, established in the notices of the final results of the seventh and eighth administrative reviews of the suspension agreement (*See Certain Refrigeration Compressors from the Republic of Singapore; Final Results of Countervailing Duty Administrative Review*, 56 FR 63714 (December 5, 1991); and 57 FR 46540 (October 9, 1992)) are 4.05 and 5.52 percent, respectively. The GOS may refund or credit, in accordance with section B.4.c of the agreement, the difference, plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department. The Department will notify the GOS of these adjustments after publication of the final results of this review.

If the final results of this review remain the same as these preliminary results, the Department intends to notify the GOS that the provisional export charge rate on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 3.00 percent of the f.o.b. value of the merchandise.

The agreement can remain in force only as long as shipments from the signatories account for at least 85

percent of imports of the subject refrigeration compressors into the United States. Our information indicates that the two signatory companies accounted for 100 percent of imports into the United States from Singapore of this merchandise during the review period.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Pursuant to 19 CFR 355.38(c), interested parties may submit written comments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 355.22.

Dated: November 11, 1994.

Susan G. Esserman,  
Assistant Secretary for Import  
Administration.

[FR Doc. 94-28575 Filed 11-17-94; 8:45 am]

BILLING CODE 3510-DS-P

### Export Trade Certificate of Review

**ACTION:** Notice of Issuance of an Export Trade Certificate of Review, Application No. 94-00005.

**SUMMARY:** The Department of Commerce has issued an Export Trade Certificate of Review to William E. Elliott (d/b/a Export Exchange). This notice summarizes the conduct for which certification has been granted.

**FOR FURTHER INFORMATION CONTACT:** W. Dawn Busby, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-482-5131. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1994).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the *Federal Register*. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

### DESCRIPTION OF CERTIFIED CONDUCT:

#### Export Trade

##### 1. Products

All products.

##### 2. Services

All services.

##### 3. Export Trade Facilitation Services (as they relate to the Export of Products and Services)

Export Trade Facilitation Services including professional services in the areas of government relations, foreign trade and business protocol, marketing, marketing research, negotiations, joint ventures, shipping, export management, advertising, documentation, insurance and financing, trade show exhibitions, organizational development, management strategies and transfer of technology.

#### Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.)

#### Export Trade Activities and Methods of Operation

1. To engage in Export Trade in the Export Markets as an Export Intermediary, William E. Elliott (d/b/a Export Exchange) may:

- Provide and/or arrange for the provision of Export Trade Facilitation Services;
- Engage in promotional and marketing activities as they relate to

exporting Products and/or Services to the Export Markets;

c. Enter into exclusive export sales agreements with Suppliers for the export of Products and/or Services for sale in the Export Markets; such agreement may prohibit Suppliers from exporting independently of William E. Elliott (d/b/a Export Exchange);

d. Enter into exclusive and/or territorial agreements with distributors in the Export Markets;

e. Establish the price of Products and/or Services for sale in the Export Markets;

f. Allocate export orders among Suppliers; and

g. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules in order that William E. Elliott (d/b/a Export Exchange) can determine and effectively coordinate the availability of supplies for export with distributors.

#### Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, William E. Elliott (d/b/a Export Exchange) will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. William E. Elliott (d/b/a Export Exchange) will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

#### Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

#### Protection Provided by the Certificate

This Certificate protects William E. Elliott (d/b/a Export Exchange) and its employees acting on its behalf from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

#### Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

#### Other Conduct

Nothing in this Certificate prohibits William E. Elliott (d/b/a Export Exchange) from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of the antitrust laws.

#### Disclaimer

The issuance of this Certificate of Review to William E. Elliott (d/b/a Export Exchange) by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary or by the Attorney General concerning either (a) the viability or quality of the business plans of William E. Elliott (d/b/a Export Exchange) or (b) the legality of such business plans of William E. Elliott (d/b/a Export Exchange) under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country. The application of this Certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V. (D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)", 50 Fed. Reg. 1786 (January 11, 1985).

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: November 14, 1994.

W. Dawn Busby,  
Director, Office of Export Trading Company Affairs.

[FR Doc. 94-28502 Filed 11-17-94; 8:45 am]

BILLING CODE 3510-DR-P

#### U.S. Automotive Parts Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

ACTION: Closed meeting of U.S. Automotive Parts Advisory Committee.

**SUMMARY:** The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

**DATE AND LOCATION:** The meeting will be held on Thursday, December 1, 1994 from 10:00 a.m. to 3:30 p.m. at the U.S. Department of Commerce in Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert Reck, Office of Automotive Affairs, Trade Development, Main Commerce, Room 4036, Washington, DC 20230, telephone: (202) 482-1418.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on July 5, 1994, pursuant to Section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination is

available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: November 9, 1994.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 94-28535 Filed 11-17-94; 8:45 am]

BILLING CODE 3510-DR-P

#### United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Notice of Decision of Panel

**AGENCY:** North American Free-Trade Agreement (NAFTA) Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of decision of Binational Panel.

**SUMMARY:** By a decision dated November 4, 1994, the Binational Panel reviewing the final affirmative injury determination made by the U.S. International Trade Commission (ITC) respecting Certain Flat-Rolled Carbon Steel Products from Canada (Secretariat File No. USA-93-1904-05) affirmed the determination of the ITC. A copy of the complete panel decision is available from the NAFTA Secretariat.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). The Rules were published in the *Federal Register* on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules

of Procedure for Article 1904 Binational Panel Reviews, published in the *Federal Register* on December 27, 1989 (54 FR 53165). A consolidated version of the amended Rules was published in the *Federal Register* on June 15, 1992 (57 FR 26698). The Rules were further amended and published in the *Federal Register* on February 8, 1994 (59 FR 5892). The panel review in this matter was conducted in accordance with the Rules, as amended.

#### Background

On June 30, 1992, a coalition of U.S. steel manufacturers filed a petition with the U.S. International Trade Commission and the U.S. Department of Commerce alleging that the domestic steel industry was materially injured or threatened with injury by reason of dumped imports from Canada, among other countries. In August 1992, the Commission made preliminary affirmative dumping determinations with respect to corrosion-resistant steel products from several countries. On September 16, 1993, the Commission determined that a domestic industry was materially injured by reason of dumped or subsidized imports of corrosion-resistant steel.

The Commission found that, with respect to corrosion-resistant steel, there were two like products: corrosion-resistant clad plate and corrosion-resistant steel other than clad plate. A majority of the Commission decided that the domestic industry producing corrosion-resistant clad plate was not materially injured or threatened with injury by reason of the subject imports. The Commission further decided that the industry producing corrosion-resistant steel other than clad plate was materially injured by reason of the subject imports. The Panel review addressed only the Commission's determination that the domestic industry has been materially injured by reason of imports of corrosion-resistant steel flat products, other than clad plate, from Canada.

#### Panel Decision

On November 4, 1994, the Binational Panel affirmed the final affirmative injury determination respecting flat-rolled, corrosion-resistant carbon steel products from Canada made by the U.S. International Trade Commission on September 16, 1993.

A Notice of Final Panel Action will be issued on the eleventh (11) day following the issuance of the decision (November 15, 1994).

Dated: November 14, 1994.

James R. Holbein,

United States Secretary, NAFTA Secretariat.

[FR Doc. 94-28501 Filed 11-17-94; 8:45 am]

BILLING CODE 3510-GT-M

#### National Telecommunications and Information Administration

##### Advisory Council on the National Information Infrastructure; Notice of Open Meeting

**AGENCY:** National Telecommunications and Information Administration (NTIA).

**ACTION:** Notice is hereby given of a meeting of the United States Advisory Council on the National Information Infrastructure, created pursuant to Executive Order 12864, as amended.

**SUMMARY:** The President established the Advisory Council on the National Information Infrastructure (NII) to advise the Secretary of Commerce on matters related to the development of the NII. In addition, the Council shall advise the Secretary on a national strategy for promoting the development of the NII. The NII will result from the integration of hardware, software, and skills that will make it easy and affordable to connect people, through the use of communication and information technology, with each other and with a vast array of services and information resources. Within the Department of Commerce, the National Telecommunications and Information Administration has been designated to provide secretariat services to the Council.

**Authority:** Executive Order 12864, signed by President Clinton on September 15, 1993, and amended on December 30, 1993 and June 13, 1994.

**DATES:** The NII Advisory Council meeting will be held on Tuesday, December 6, 1994 from 8:30 a.m. until 4:30 p.m.

**ADDRESSES:** The NII Advisory Council meeting will take place at the Department of Commerce Auditorium, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Ms. Celia Nogales (or Ms. Meggan Griggs, alternate), Designated Federal Officer for the Advisory Council on the National Information Infrastructure, National Telecommunications and Information Administration (NTIA); U.S. Department of Commerce, Room 4892; 14th Street and Constitution Avenue, NW., Washington, DC 20230. Telephone: 202-482-1835; Fax: 202-482-0979; E-mail: nii@ntia.doc.gov.

**SUPPLEMENTARY INFORMATION:** Future meetings of the Advisory Council on the National Information Infrastructure are planned on January 26, 1995 in Raleigh, North Carolina and March 10, 1995 in Los Angeles, California.

#### Agenda

1. Opening Remarks by the Co-Chairs (Delano Lewis, Ed McCracken).
2. Review of Progress on Mega-Projects.
3. Education and Electronic Commerce Principles.
4. Intellectual Property and Privacy Principles.
5. Universal Access Principles.
6. Discussion of Global Information Infrastructure Issues.
7. Public Discussion, Questions and Answers.
8. Next Meeting Date and Agenda Items.

#### Public Participation

The meeting will be open to the public, with limited seating available on a first-come, first-served basis. Any member of the public requiring special services, such as sign language interpretation, should contact Meggan Griggs at 202-482-1835.

Any member of the public may submit written comments concerning the Council's affairs at any time before or after the meetings. Comments should be submitted through electronic mail to [nii@ntia.doc.gov](mailto:nii@ntia.doc.gov) or to the Designated Federal Officer at the address listed above.

Within thirty (30) days following the meeting, copies of the minutes of the Advisory Council meeting may be obtained through Bulletin Board Services at 202-501-1920, 202-482-1199, over the Internet at [iitf.doc.gov](http://iitf.doc.gov), or from the U.S. Department of Commerce, National Telecommunications and Information Administration, Room 4892, 14th Street and Constitution Avenue, NW.; Washington, DC 20230. Telephone 202-482-1835.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 94-28514 Filed 11-17-94; 8:45 am]

BILLING CODE 3510-60-P-M

#### COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

##### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

November 15, 1994.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** November 15, 1994.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6719. For information on embargoes and quota re-openings, call (202) 482-3715.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for carryforward and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 65347, published on December 14, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

**Committee for the Implementation of Textile Agreements**

November 15, 1994.

Commissioner of Customs,  
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive

concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 15, 1994, you are directed to amend further the directive dated December 8, 1993 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1991, as amended:

Category	Adjusted twelve-month limit <sup>1</sup>
Within Group II sub-group	
351 .....	434,744 dozen.
651 .....	408,082 dozen.

<sup>1</sup> The limits have not been adjusted to account for any imports exported after December 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-28576 Filed 11-17-94; 8:45 am]

BILLING CODE 3510-DR-F

##### Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Thailand

November 15, 1994.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** November 15, 1994.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6717. For information on embargoes and quota re-openings, call (202) 482-3715.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 369-D is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 21962, published on April 28, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 15, 1994.

Commissioner of Customs,  
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 21, 1994 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on November 15, 1994, you are directed to amend the April 21, 1994 directive to increase the limit for Category 369-D<sup>1</sup> to 200,973 kilograms<sup>2</sup>, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Thailand.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-28577 Filed 11-17-94; 8:45 am]

BILLING CODE 3510-DR-F

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

<sup>1</sup> Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

<sup>2</sup> The limit has not been adjusted to account for any imports exported after December 31, 1993.

### ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 19, 1994.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On August 12, September 23 and 30, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 41434, 48864 and 49913) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

#### Commodities

Pencil, Mechanical  
7520-01-386-1581

7520-01-385-7362

#### Services

Janitorial/Custodial, U.S. Border Station, Customs Building and Truck Stop 406 and 410 Virginia Street, San Diego, California

Mailing Service, U.S. Department of Commerce, Bureau of Economic Analysis, Washington, DC

Switchboard Operation, Veterans Administration Medical Center, San Francisco, California

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 94-28554 Filed 11-17-94; 8:45 am]

BILLING CODE 6820-33-P

### Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 19, 1994.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On September 23, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 48864) of proposed addition to the Procurement List.

Comments were received from a previous contractor in response to a request for sales data. The contractor indicated a decline in its sales over an unspecified period and opened that addition of the floorboard to the Procurement List would decrease its sales. The contractor's General Manager also offered to fill a vacant seat on the Committee.

The contractor did not win the current contractor for the floorboard and is thus not a current contractor on which the Committee is required to assess impact. Accordingly, given its failure to provide specific information on how the Committee's action would harm the contractor's business, the Committee must conclude that all the

contractor is losing is an opportunity to compete for future contracts for the floorboard. The Committee does not consider this loss to constitute severe adverse impact.

The Committee does not have any vacancies in its membership at this time for which the contractor's General Manager meets the statutory qualifications.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement List:

Floorboard, Vehicular  
2510-01-063-3892

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

G. John Heyer,  
General Counsel.

[FR Doc. 94-28555 Filed 11-17-94; 8:45 am]

BILLING CODE 6820-33-P

#### Procurement List Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** December 19, 1994.

**ADDRESS:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603-7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action will result in authorizing small entities to furnish the commodity and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

**Commodity**

Folder, File

7530-00-200-4308

(Requirements for the Stockton, CA depot only)

NPA: Lions Club Industries for the Blind, Inc.  
Durham, North Carolina  
Raleigh Lions Clinic for the Blind, Inc.  
Raleigh, North Carolina

**Service**

Switchboard Operation, Department of Veterans Affairs Medical Center, 4300 West 7th Street, North Little Rock, Arkansas, NPA: Pathfinder Schools, Inc., Jacksonville, Arkansas

G. John Heyer,

General Counsel.

[FR Doc. 94-28556 Filed 11-17-94; 8:45 am]

BILLING CODE 6820-33-P

#### Procurement List Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed Additions to and Deletions from Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities, a military resale commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** December 19, 1994.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

**FOR FURTHER INFORMATION CONTACT:** Beverly Milkman (703) 603-7740

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

#### Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities, military resale commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small

entities other than the small organizations that will furnish the commodities, military resale commodity and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities, military resale commodity and service.

3. The action will result in authorizing small entities to furnish the commodities, military resale commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities, military resale commodity and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities, military resale commodity and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

#### Commodities

Cleaning Compound (non-abrasive cleaner/degreaser)  
7930-00-NIB-0022 (Trigger Spray, 22 oz.)  
7930-00-NIB-0023 (Refill, 22 oz.)  
7930-00-NIB-0024 (Aerosol, 20 oz.)  
7930-00-NIB-0025 (1 gallon)  
7930-00-NIB-0026 (5 gallon)  
7930-00-NIB-0027 (15 gallon)  
7930-00-NIB-0028 (55 gallon)

(citrus based cleaner/degreaser)  
7930-00-NIB-0031 (Trigger Spray, 22 oz.)  
7930-00-NIB-0032 (Refill, 22 oz.)  
7930-00-NIB-0033 (Aerosol, 20 oz.)  
7930-00-NIB-0034 (1 gallon)  
7930-00-NIB-0035 (5 gallon)  
7930-00-NIB-0036 (15 gallon)  
7930-00-NIB-0037 (55 gallon)

(Requirements for the General Services Administration)

NPA: Lighthouse for the Blind, St. Louis, Missouri

#### Military Resale Commodity

Refill, Mop, Dust  
M.R. 985

NPA: Mississippi Industries for the Blind  
Jackson, Mississippi  
Industries of the Blind, Inc., Greensboro, North Carolina

#### Service

Patient Escort Service, Veterans  
Administration Medical Center, 508  
Fulton Street, Durham, North Carolina  
NPA: Durham Exchange Club Industries, Inc.,  
Durham, North Carolina

#### Deletions

The following commodities and services have been proposed for deletion from the Procurement List:

#### Commodities

Pallet, Wood  
3990-00-NSH-0069  
Test Set, Lead  
6625-00-553-1442

#### Services

Cardboard and Paper Scrap Recovery, New  
Cumberland Army Depot, New  
Cumberland, Pennsylvania  
Commissary Shelf Stocking and Custodial,  
Lowry Air Force Base, Colorado  
Janitorial/Custodial, Defense Logistics  
Agency, Defense National Stockpile  
Zone, HMW-New Haven Depot, State  
Route 14, 3 Miles East of New Haven,  
New Haven, Indiana

Janitorial/Custodial, U.S. Army Reserve  
Center, 200 Baker Road, Pittsfield,  
Massachusetts

Janitorial/Custodial, Wilson Kramer U.S.  
Army Reserve Center, 2940 Airport  
Road, Bethlehem, Pennsylvania

Janitorial/Custodial, U.S. Army Reserve  
Center, Anderson, South Carolina

Janitorial/Custodial for the following  
locations:

Federal Building, 130 East Main Street,  
Carthage, Tennessee Federal Building,  
118 East Locust Street, Lafayette,  
Tennessee

Janitorial/Custodial, Social Security  
Administration Building, 1891 South 3rd  
Street, Memphis, Tennessee

Janitorial/Custodial, U.S. Army Reserve  
Center, 2501 Fraiser, Conroe, Texas

Janitorial/Grounds Maintenance, U.S. Army  
Reserve Center, Caesar Creek Lake, Ohio

G. John Heyer,

General Counsel.

[FR Doc. 94-28557 Filed 11-17-94; 8:45 am]

BILLING CODE 6820-33-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on December 6, 1994; December 13, 1994; December 20, 1994; and December 27, 1994, at 10:00 a.m. in Room 800, Hoffman Building # 1, Alexandria, Virginia.

Under the provisions of section 10(d) of Public Law 92-463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data considered were obtained from officials of private establishments

with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301-4000.

Dated: November 14, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison  
Officer, Department of Defense.

[FR Doc. 94-28476 Filed 11-17-94; 8:45 am]

BILLING CODE 5000-04-M

## Department of the Air Force

### Notice of Intent to Prepare a Supplemental Environmental Impact Statement for Disposal of Pease Air Force Base, NH

Lead Agency: Department of the Air  
Force.

Cooperating Agency: Department of  
Transportation, Federal Aviation  
Administration.

The Department of the Air Force will prepare a Supplemental Environmental Impact Statement (SEIS) for disposal of Pease Air Force Base (AFB), New Hampshire, in accordance with the National Environmental Policy Act (NEPA) and decisions rendered on August 29, 1994 in the US District Court of New Hampshire (Conservation Law Foundation, Inc and Town of Newington v. Department of the Air Force, et al).

Pease AFB was closed under the provisions of the Base Closure and Realignment Act of 1988 (Public Law 100-526). Previous environmental documentation included the Final Environmental Impact Statement for the Closure of Pease AFB, New Hampshire (May, 1990) and subsequent Record of Decision (ROD) (July, 1990); and the Final Environmental Impact Statement for Disposal and Reuse of Pease AFB, New Hampshire (July, 1991), with subsequent RODs issued in August, 1991 and April, 1992.

On March 26, 1992, the Conservation Law Foundation filed a citizen's suit against the US EPA and the Air Force alleging violations of NEPA and the Clean Air Act (CAA) in the preparation of the July, 1991 Disposal and Reuse EIS. The US District Court found the Air Force had not complied with NEPA and ordered preparation of a Supplemental EIS. As ordered by the Court, the Air

Force is preparing an SEIS to provide additional information regarding the following:

- a. Compliance of the Pease redevelopment with the 1990 CAA Amendments, specifically the manner in which the project will comply with the interim emission reduction requirements for ozone precursors.
- b. A discussion of 1991 carbon monoxide air quality modeling results for selected traffic intersections around the base.
- c. The air quality impact on the State of Maine.
- d. Alternative mitigation measures.
- e. The impact of proposed redevelopment on surrounding wetlands.

f. A summary of the current status of the Installation Restoration Program, specifically the Remedial Designs and Remedial Actions in place to clean up hazardous waste sites.

The scoping process is not required in the preparation of an SEIS, however the Air Force will accept inputs from federal, state, or local agencies, or any other interested parties, concerning potential environmental issues. To ensure that the Air Force will have sufficient time to consider public inputs, comments should be forwarded to the address provided below by December 20, 1994. Input and further inquiries regarding the SEIS activities should be directed to: Jonathan D. Farthing, Chief, Environmental Analysis Division, HQ AFCEE/ECA, 8106 Chennault Road, Brooks AFB, TX 78235-5318, Telephone: (210) 536-3802.

#### List of Subjects

Environmental Protection,  
Environmental Impact Statement, US  
Air Force, Pease AFB, Defense Base  
Closure and Realignment.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 94-28696 Filed 11-17-94; 8:45 am]

BILLING CODE 3010-01-P

#### DEPARTMENT OF EDUCATION

##### President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

**AGENCY:** President's Advisory Commission on Educational Excellence for Hispanic Americans.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets the schedule and agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic

Americans. This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

**DATES AND TIMES:** December 2 and 3, 1994, 9 a.m.-5 p.m.

**ADDRESSES:** Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** Marsha Harper, Telephone: (202) 205-2420.

**SUPPLEMENTARY INFORMATION:** The President's Advisory Commission on Educational Excellence for Hispanic Americans is established under Executive Order 12900 on February, 1994. The Commission is established to advise on Hispanic achievements of the National Goals, as well as other educational accomplishments. The meeting of the Commission is open to the public. The Agenda includes:

December 2, 1994, Friday, 9 a.m.-5 p.m. Commission Orientation and panel presentation by Federal Agency officials and Working Group Sessions.

December 3, 1994, Saturday, 9 a.m.-5 p.m. Continuation of All Day Strategic Planning Session.

Records are kept of all Commission proceedings, and are available for public inspection at the White House Initiative for Hispanic Education at 600 Independence Avenue, SW., Room 6442, Washington, DC 20202 from the hours of 9 a.m. to 5 p.m.

Dated: November 14, 1994.

Mario Moreno,

*Assistant Secretary, Office of Intergovernmental and Interagency Affairs.*

[FR Doc. 94-28558 Filed 11-17-94; 8:45 am]

BILLING CODE 4000-01-M

#### DEPARTMENT OF ENERGY

##### Clean Coal Technology Program

**AGENCY:** Department of Energy.

**ACTION:** Request for Expressions of Interest.

**SUMMARY:** The U.S. Department of Energy (DOE), Office of Fossil Energy (FE), is issuing this Announcement to request Expressions of Interest in Commercial Clean Coal Technology Projects in Foreign Countries in accordance with the guidance provided by the Congress. DOE is directed to make the international dissemination of Clean Coal Technologies (CCTs) an integral part of its policy to reduce greenhouse gas emissions in developing countries. Accordingly, DOE is required to solicit Statements of Interest in

commercial projects employing CCTs in countries projected to have significant growth in greenhouse gas emissions. Additionally, DOE shall submit to the Congress, by April 15, 1995, a report that analyzes the information contained in the Statements of Interest, and that identifies the extent to which various types of Federal incentives would accelerate the commercial availability of these technologies in an international context. Specific information regarding the preparation and submittal of Statements of Interest follows.

**DATES:** The deadline for receipt of submittals at the address identified below is 3:30 p.m., E.S.T., on Friday, the 13th of January 1995.

**Presubmittal Conference:** A Presubmittal Conference for this invitation for Statements of Interest will be held on Wednesday, December 14, 1994, at 10:00 a.m. local Washington, D.C., time in the DOE Auditorium of the Forrestal Building, as noted below. The purpose of this meeting will be to provide the opportunity for prospective respondents to gain a better understanding and clarification of the objectives and requirements of this Announcement. The Conference will be conducted informally to facilitate constructive dialog, and advance submittal of questions or comments is not required. Seating will be available on a first-come-first-served basis.

The Presubmittal Conference will be held at the following location: Departmental Auditorium, U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Attendees must enter via the Main Lobby of the Forrestal Building, register for the Conference, and obtain an access pass for the purpose of the meeting. Accordingly, please take this registration process into account in planning your arrival time.

**ADDRESSES:** Mailed submittals should be addressed to: Dr. Howard Feibus, Director, Office of Clean Coal Technology, Fossil Energy, FE-221 (270 CC), U.S. Department of Energy, Washington, D.C., 20585.

**FOR FURTHER INFORMATION CONTACT:** For further information on this Announcement, contact Dr. Howard Feibus, Director, Office of Clean Coal Technology, Fossil Energy, FE-221 (270 CC), U.S. Department of Energy, Washington, D.C., 20585, Tel. (301) 903-4348, Facsimile (301) 903-0243.

#### SUPPLEMENTARY INFORMATION:

##### Background

This Announcement is issued pursuant to the Conference Report, No.

103-740, to accompany Pub. L. No. 103-332, the Department of the Interior and Related Agencies Appropriations Act, 1995, and the guidance contained in the corresponding Senate and House Reports, Nos. 103-294 and 103-551, respectively. The following is a summary description of DOE's CCT Program, international and other recommendations that have been proposed by various parties regarding the future of the Program, and the Congressional guidance for this Announcement.

Potential respondents are advised that DOE has no monies or wherewithal to fund, or to otherwise provide any incentive in support of, any of the projects that may be proposed, does not anticipate endorsing or supporting any proposals pursuant to this Announcement, and cannot reimburse submitters for any expenses they may incur in responding to this Announcement. This solicitation is being conducted, as requested by the Congressional guidance, so that Congress may have the information it requires in order to consider the technical, economic, and environmental aspects of various incentives to support international CCTs, and their merits for potential future support.

#### DOE's CCT Program

The burning of coal releases carbon dioxide (CO<sub>2</sub>), sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>), particulate matter, and ash. The business of DOE's CCT Program is to develop and demonstrate the means of economically utilizing coal with attendant minimal emissions of these undesirable pollutants. When we speak of CCTs, we mean coal-based systems that offer significant benefits when used for power generation, pollution control, or the conversion of coal into other alternate energy products. The challenge confronting us for the future is less whether coal will be used, but more to ensure that its use is accomplished in the most efficient manner (thermodynamically and economically) consistent with the least adverse impact on the environment. Environmental requirements have joined with cost reduction to become the primary forces driving coal technology development in new directions. A responsive and successful technology development and demonstration program is essential to realizing sustainable economic and environmental development of our coal reserves, both domestically and on a global basis.

The CCT Program initiative is the largest technology development and demonstration effort now underway in

DOE. To date, the level of funding has responded directly to the strategic importance of coal in the U.S. economy and the international marketplace, and has recognized the need to develop solutions for the problems (economic and environmental) associated with meeting increased demand for this source of energy. The fact that the present and near term future of coal as an energy source depends upon continued advances in coal utilization technology has been accepted, and is being acted upon.

The CCT Program is a technology development and demonstration effort, jointly funded by the Government and industry, whereby the most promising of the advanced coal-based technologies are being moved into the marketplace through demonstration. The demonstration effort is at a scale large enough to generate the data needed by the public sector to judge the commercial potential of the processes being developed. The goal of the Program is to make available to the U.S., and indeed to the global, energy marketplace a number of advanced, more efficient, and environmentally responsive coal utilization technologies. These technologies will reduce or eliminate the economic and environmental impediments that limit the full use of coal. This activity and the resulting processes that will be commercialized are in recognition of the strategic importance of coal to the U.S. economy and the international marketplace. They are efforts that will resolve the conflict between the increasing use of coal and the growing concern about the environmental impact of such use.

The Program, as directed by Congress, has consisted of five competitive solicitations for cost-shared demonstration proposals, such that there now are 45 projects in the Program with a combined estimated cost of about 7 billion dollars. Of particular importance to DOE is the level of financial participation in these projects by the private sector. Although the Congress, in its guidance, requires that such participation be a minimum of 50 percent, the participants are voluntarily providing an overall average of 66 percent of the funds in the Cooperative Agreements that have been negotiated to date.

#### The Future of DOE's CCT Program

With the announcement of the results of the fifth competitive CCT solicitation in May 1993, the goals of the CCT Program as originally envisioned by the U.S. and Canadian "Special Envoys on Acid Rain" have been largely met, as

innovative pollution control technologies are beginning to move into the marketplace. By the completion of this fifth "round," the Program will have laid the basis for a new generation of advanced industrial and electric power technologies. In the course of evaluating future prospects for DOE's CCT Program, in its May 1994 report to the Congress entitled, "CCT Program: Completing the Mission," DOE found that "an expansion of the current demonstration program in the form of an additional round of competition is not recommended." However, the report conjectured a likelihood that, by virtue of possible termination of one or two CCT projects prior to completion, "\$150 million would be available both to fund new initiatives and provide program direction in the out years." Thus, DOE recommended "that Congress initially establish an International Technology Transfer Program."

In its Fiscal Year (FY) 1995 Congressional Budget Request for the CCT Program, DOE proposed to proceed in this direction:

A new initiative is to implement an international program, in part authorized by Section 1332 of the Energy Policy Act of 1992, for CCTs that substantially reduce environmental pollutants, including greenhouse gases, in developing countries or countries with economies in transition. The objective of the program is to increase trade exports and U.S. jobs by increasing the market share for U.S. energy and environmental technology services in developing countries and to improve environmental performance of existing and new power generating facilities in these countries. The Program would finance a portion of the differential cost (when compared to conventional technology currently used in the host country) of using high efficiency and environmentally sound U.S. technology in two "showcase" projects—one in China, another in Eastern Europe—for the generation of power from new facilities or the improvement of performance of existing facilities. These projects would be examples of the U.S. Initiative on Joint Implementation which is consistent with the provisions of the President's Climate Change Action Plan.

Prospective overseas markets promise to increase U.S. employment opportunities related to CCT sales and services. Eastern Europe and China were selected since each respectively far exceeds other regional markets for rehabilitation and new applications for power facilities. It is envisioned [that] the project in China will involve integrated gasification combined cycle technology and [that] Eastern Europe will demonstrate repowering/rehabilitation technologies.

In response to a request by the Secretary of Energy for a study of future directions for the CCT Program, the National Coal Council, in its February

1994 report, Clean Coal Technology for Sustainable Development, recommended that:

1. The Secretary of Energy not engage in any further solicitations under the existing CCT Program. Where unused funds exist, the continuation of operating demonstrations should be pursued as a means of facilitating commercial deployment through expanded operating experience.
2. The Secretary of Energy promote the role of CCT in the environmental technology programs of the Administration; that CCT can improve the global environment as well as prevent pollution.
3. The Secretary of Energy establish a new Federal Clean Coal Technology Incentive Program of approximately \$1.5 billion over 15 years to stimulate commercial deployment.
4. The Secretary of Energy ensures that future governmental policy continues to be monitored from the standpoint of the competitive position of and the ability to deploy CCT.

#### Congressional Guidance

In response to these proposals and recommendations, the Senate Report (No. 103-294) explained that:

No funds have been made available for the international initiative recommended by the administration, for a domestic commercial incentives program suggested by the National Coal Council, or for a new round VI procurement for additional projects. The Committee believes the highest priority for this program is to complete the existing projects as promptly as possible, but with reasonable assurance that sufficient data are generated to support subsequent commercialization activity.

Additionally, Congressional guidance was provided by the Senate Report specific to this solicitation for Statements of Interest in international CCT projects, as follows:

The Committee does, however, support efforts by DOE in promoting exports of CCTs, particularly to countries experiencing rapid economic development. These technologies promise a number of significant economic and environmental benefits. In China, for example, the introduction of U.S. coal-fired power technology from the CCT program would allow that country to use its energy resources 40 percent more efficiently. This U.S. technology would require 30 percent less of China's water resources. Potential carbon dioxide emissions from power generation would be cut by 40 percent and potential emissions of sulfur, nitrogen oxides, and particulates would be reduced by 90 percent or more. While the Committee does not support the particular mechanism proposed by DOE to initiate a showcase demonstration project of CCT in China in FY 1995, the Committee does recognize the tremendous environmental potential of CCTs, particularly in helping to reduce the possibility of future global climate change that may be the result of enhanced production of greenhouse gases in developing countries.

Accordingly, DOE is directed to make the dissemination of CCTs overseas an integral part of its policy to reduce greenhouse gas emissions in developing countries. The Secretary [of Energy] is also directed to solicit, in the Federal Register, statements of interest in commercial projects employing CCTs, and shall submit to the congressional committees of jurisdiction, no later than April 15, 1995, a report that analyzes the information contained in such statements of interest and that identifies the extent to which various types of Federal incentives will accelerate the commercial availability of these technologies. This report shall specifically discuss the interests in, prospects of, and optimal incentives for demonstrating CCTs in countries projected to have significant growth in greenhouse gas emissions, using projects smaller in scale than those proposed in the FY 1995 budget request.

Commensurate with the above guidance, Conference Report No. 103-740 accompanying the appropriations legislation noted that:

The managers agree with the Senate language asking [DOE] to solicit expressions of interest in commercial projects employing CCTs, limited to international (non-domestic) projects of the type described in the Senate report. These expressions of interest should be sought from U.S.-based companies or consortia expecting to provide significant domestic content to such projects.

Similarly, the Congressional guidance provided by the House Report No. 103-551 noted, in part, that: The Committee does not support the construction of "showcase" facilities in international markets as proposed by the Administration. Many large projects to prove the use of gasifiers in power plants are currently underway in the United States, through the CCT program, and at several other worldwide locations. Gasifiers of the kind envisioned in the proposed China project are already operating in China as well as in other areas. Providing a subsidy to one more gasification project will not make it "welcome." Retrofit technologies for emissions control are already commercial and can be applied to Eastern European markets provided capital is available and electricity is sold on a commercial basis. A subsidy might be accepted in this case also, but does not address the main market problems of lack of capital and sale of electricity at less than commercially viable rates.

#### Previous Respondents

Prospective submitters are advised that previous respondents to any one or more of the previous CCT Program solicitations (Program Opportunity Notices) are welcome to submit a Statement of Interest in response to this

Announcement. Respondents may propose projects similar to those previously submitted, providing they otherwise satisfy the requirements set forth in this Announcement, including the international and global climate change aspects.

#### Statements of Interest and Informational Proposals

Statements of Interest and informational proposals submitted in response to this Announcement shall propose an international (non-domestic) project that would employ at least one CCT, and that is responsive to the Congressional guidance with regard to, at a minimum, the following:

- (1) Sponsored by a U.S.-based company or consortium;
- (2) Location in a developing country, or in a country making the transition from a centrally planned to a market economy, projected to have significant growth in greenhouse gas emissions;
- (3) Capability of reducing greenhouse gas emissions, particularly CO<sub>2</sub>, as compared to technologies in common use in the proposed locale;
- (4) Versatility with regard to effective usage of various globally available coal types and characteristics; and
- (5) Likelihood of utilization on a broad commercial scale subsequent to successful demonstration.

It is important to note that proposals that do not satisfy the requirements for locales in developing countries, or in countries making the transition from centrally planned to market economies, projected to have significant growth in greenhouse gas emissions, or having the potential for significant reductions in emissions from existing facilities, will be considered to be unresponsive to this solicitation and hence will be neither analyzed nor included in the Report to Congress.

Proposed projects may be for either electric utility, industrial, or commercial applications, and may be suitable for either retrofit to existing facilities; repowering, modernizing, or life-extending existing facilities; or for new ("grass roots" or "greenfield") facilities.

Interested parties may propose multiple projects, either within a single country or in multiple countries, either with the same CCT or with different CCTs, and either with the same requested type of Federal incentive or with different incentives. However, each proposed project must be submitted in its own separate, complete ("stand alone"), Statement of Interest. Each Statement of Interest must be limited to a single proposed project.

Respondents are reminded again that no monies currently are available to

fund proposals for projects submitted in response to this Announcement. Statements of Interest should be brief, but should include the following information to the extent known, and in sufficient detail to permit analysis and meaningful reporting to the Congress of the data they require to allow them to ascertain the merits of support for such projects in the future, specifically the interests in, prospects of, and optimal incentives for demonstrating CCTs in the identified foreign countries:

1. The identity of the responding U.S.-based company or consortium, including the name, title, telephone number, and facsimile number, of an individual point-of-contact.
2. Show that the respondent would provide "significant domestic content" for the proposed project.
3. Identify the proposed project location as specifically as possible, and describe why the candidate developing country, or country making the transition from a centrally planned to a market economy, is projected to have significant growth in greenhouse gas emissions, or has the potential for significant reductions in emissions from existing facilities.
4. Provide the rationale for the particular CCT(s) chosen, in the context of above Entry 3.
5. Identify the likely source(s) of the coal(s), i.e., whether indigenous to the project host country or to be imported, and, if the latter, from what country.
6. Document the status of the selected CCT(s) with regard to commercial readiness for use in the proposed project.
7. Describe the environmental attributes of the proposed project, particularly regarding carbon dioxide emissions, but also in terms of emissions of SO<sub>2</sub>, NO<sub>x</sub>, particulates (with emphasis on PM<sub>10</sub>), hazardous and toxic pollutants, water requirements, especially consumptive water loss, and solid waste quantities and characteristics.
8. Identify the type of Federal incentive sought, including the costs to the Government, and documentation of the means whereby the incentive would accelerate the commercial availability of the technology(ies) in the host country for the proposed project. Since this subject is central to the subsequent Report to Congress, it is essential that respondents address the incentive with as much specificity, clarity, and justification as reasonably possible. In particular, identify the impediments that would be alleviated by the requested incentive.
9. Further to above Entry 8, explain the merits of governmental support, including, but not limited to, potential for increased U.S. exports of goods and services, possible U.S. coal use, and mitigation of potential global climate change.
10. Address environmental aspects of the siting of the specific proposed project, including potential impacts to the host country and neighboring countries, and impact assessment requirements that could possibly be applicable, such as might be imposed by the laws of the host country or

member organizations that include this country, e.g., the European Union or the North American Free Trade Agreement.

Respondents are advised that DOE is *not* requesting extensive data on technical performance, project design, partnership arrangements, or detailed project economics as part of any proposed submission under this Announcement.

In order for the Department of Energy (DOE) to have a clear understanding of the international markets for clean coal technologies and how the Federal Government can best assist U.S. industry in commercializing U.S. technologies abroad, it would be useful for the offerors to include any comments or discussion on the following questions:

- What are the greatest opportunities for commercializing U.S. clean coal technologies abroad (short and long term)?
- What global regions or countries are the most promising?
- Which types of clean coal technologies are the most promising?
- "Off-the-shelf" commercial technologies or cleaner and more efficient technologies now being demonstrated in the DOE CCT Program, or other advanced technologies not currently in the CCT Program?
- Technologies to upgrade or modernize currently operating plants and systems abroad (through retrofit life extension, coal cleaning, and other approaches) or new, grass-roots plants?
- What role can DOE best play to facilitate commercialization of these technologies?
- Help identify market opportunities?
- Help open doors for U.S. investors?
- Be a strong advocate of U.S. projects?
- Support feasibility studies and other project development activities?
- Support regulatory changes if there are regulatory issues that are impeding foreign sales?
- Support development of technical data that would enhance foreign sales, such as testing the performance of foreign coals with U.S. technologies.
- Support any other mechanisms or incentives?

### Special Instructions

Statements of Interest shall be prepared to comply with the special instructions provided below, and shall be structured in the order that follows. Respondents may reproduce and complete these forms electronically (by computer software) in lieu of completing the actual forms published

in this Program Announcement. There is no preference given to the use of the published forms versus electronically recreated forms.

- (1) Statement Cover Sheet (Appendix A; see Special Instruction No. 1, below).
- (2) Public Abstract (Appendix B; see Special Instruction No. 2, below).
- (3) Project Summary (Appendix C; see Special Instruction No. 3, below).
- (4) Statement of Interest Cover Sheet

### 1. Statement of Interest Cover Sheet

Appendix A of this Announcement provides a form that shall be used for the preparation of the Cover Sheet of the Statement of Interest. Submitters are required to complete the form in accordance with the instructions that follow, and then to photocopy that form for use as Page 1 of each copy of the submittal. Each submittal shall be provided in one (1) original and six (6) copies. In the space provided on the Cover Sheet, indicate the copy number of the particular volume, using "number 1" for the original and "numbers 2 through 7" for the six copies. Instructions for the form are provided below:

- (1) Technology(ies). Identify the CCT(s) that would be employed in your project.
- (2) Federal Incentive. Identify the type of Federal incentive sought. Describe (name) the incentive as specifically as reasonably possible.
- (3) Title. Provide the full title of the Statement of Interest. The title should be informative, i.e., reflect the substance of the project.
- (4) Project Location: To the extent possible, identify (i) the geographic location of the proposed project within the host country and (ii) the name of the host country.
- (5) Respondent. Identify the name(s) of the submitting U.S.-based company or consortium, listing the primary party first.
- (6)(7)(8)(9) Mailing Address. Provide the full mailing address of the primary party, i.e., for the entity that DOE should contact, if necessary.
- (10) Primary Contact. The name of the person who will serve as the primary point of contact for the Statement of Interest.
- (11)(12) Phone/Fax Numbers: The telephone and facsimile numbers for the person identified above, area code first.
- (13) Proprietary information instructions. Self-explanatory.

### 2. Public Abstract

Submitters shall provide a Public Abstract for their submittal that provides an overview of the proposed project. Appendix B of this Announcement provides a form that shall be used for the preparation and submittal of the Public Abstract. Detailed instructions for Appendix B follow:

- (1) Technology(ies). Same as for the Statement Cover Sheet, Entry 1.

(2) Federal Incentive. Same as for the Statement Cover Sheet, Entry 2.

(3) Title. Same as for the Statement Cover Sheet, Entry 3.

(4) Respondent. Same as for the Statement Cover Sheet, Entry 5.

(5) Abstract. One continuation sheet may be used if necessary, for a total length not to exceed two (2) pages. The Public Abstract should describe the proposed project, the specific CCT(s) proposed, the application(s) best suited to the CCT(s), i.e., whether for retrofit, repowering, modernizing, or life-extending existing facilities, or for new facilities, the objective, methodology, sponsoring organization(s), time frame (project duration), environmental characteristics, particularly with regard to global climate change gases, suitable coal(s), total estimated project cost, and the Federal incentive requested.

Respondents are advised that this Public Abstract will be released and distributed to the public by DOE. Therefore, it shall not contain any proprietary data or confidential business information.

Respondents should include photocopies of the Public Abstract in each of the seven copies of their Statement of Interest. Nothing should appear on the reverse side of any of the copies of the Public Abstract.

### 3. Project Summary

Submitters also shall complete and include in their Statements of Interest the Project Summary form provided as Appendix C of this Announcement. As was specified for Appendices A and B, photocopies of Appendix C should be included in each of the seven submittal copies. Please note that it is to the benefit of all concerned to provide information that is as specific and complete as possible. Detailed instructions for Appendix C follow:

(1) Technology(ies). Same as for the Statement Cover Sheet, Entry 1.

(2) Federal Incentive. Same as for the Statement Cover Sheet, Entry 2.

(3) Project Title. Same as for the Statement Cover Sheet, Entry 3.

(4) Respondent. Same as for the Statement Cover Sheet, Entry 5.

(5)(6)(7)(8) Mailing Address. Same as for the Statement Cover Sheet, Entries 6, 7, 8, and 9.

(9) Primary Contact. Same as for the Statement Cover Sheet, Entry 10.

(10)(11) Telephone and Facsimile Numbers. Same as for the Statement Cover Sheet, Entries 11 and 12.

(12) Project Location. Same as for the Statement Cover Sheet, Entry 4, but specifically the geographic location of the proposed project within the host country.

(13) Host Country. Same as for the Statement Cover Sheet, Entry 4, but

specifically the name of the host country itself.

The following Entries should be completed in as much detail as possible to the extent that information is available:

(14) Applicability. This entry refers to the proposed CCT(s) with regard to whether it is best suited to the electric utility, industrial, or commercial sector, and whether it lends itself most readily to retrofit, repowering, modernizing, or life-extending existing facilities, or for the construction of new facilities.

(15) Source(s) of Coal. Describe the type(s) of coal that would be used. Identify the likely source(s) of these coals, in terms of the country(ies) in which the coals would be mined.

(16) Project Size. This entry requests a measure of size appropriate to the type of project, e.g., megawatts capacity, kilograms of steam produced per hour, and coal use rate (throughput) in metric tons per hour.

(17) Environmental Performance. Describe the environmental attributes of the proposed project, particularly regarding CO<sub>2</sub> emissions and the degree to which these emissions would be reduced as compared to existing conventional technologies in common use in the proposed locale. Also summarize estimates of emissions of SO<sub>2</sub>, NO<sub>x</sub>, particulates, especially PM<sub>10</sub>, hazardous and toxic pollutants, water requirements, especially consumptive water loss, and solid waste quantities and characteristics.

(18) Project Duration. The total length of time projected for project completion, measured from onset of design and permitting to completion of construction and startup ("shakedown").

(19) Estimated Total Cost of the Project. This entry includes the total cost of support from all sources, including the requested Federal incentive, stated in U.S. dollars.

(20) Government's Incentive Cost. Estimate the cost to the Federal government of the cost of the requested incentive. If the proposed incentive is of a form other than direct financial cost-sharing, estimate the value of the potential governmental exposure, e.g., of a loan guarantee or of a generated-power price guarantee, over the projected life of the project or of the provisions of the incentive, whichever is shorter.

(21) Commercialization Potential in Host Country. If the project were to succeed, i.e., attain its design objectives, estimate the potential for commercialization of that CCT in the host country in terms of number of additional facilities and projected total installed capacity by the year 2030.

(22) Global Commercialization Potential. As for Entry 21 above, but now in a world context, estimate the potential for commercialization of that CCT globally in terms of number of additional facilities and projected total installed capacity by the year 2030.

(23) Notes or Comments: This is an optional space for additional information not included elsewhere on the forms, but which

the respondent wishes to communicate. There is no benefit or disbenefit per se associated with completing or not completing this entry.

### Number of Copies Required

Each submittal should consist of seven (7) copies, one original and six (6) photocopies. The original copy of the Statement of Interest shall contain all documents that bear original signatures.

Cover Sheets, Public Abstracts, and Project Summaries should each be on separate sheets of paper that contain no writing or information of any kind on the reverse sides. In each instance, for all three items, no other information shall appear with, or be added to, that required in Appendices A, B, and C.

### Proprietary Information

Submitters should strive to avoid including proprietary and confidential business information in their Statements of Interest. However, information provided by a respondent and identified as a trade secret or confidential business information will be treated in confidence, to the extent permitted by law, provided that this information is clearly marked by the submitter with the term, "Confidential Proprietary Information," and provided that appropriate page numbers are inserted into the legend that is set forth below which must be placed on the Statement of Interest cover sheet:

### Notice re Restriction on Disclosure and Use of Data

This submission includes data that constitute trade secrets or confidential business information and shall not be duplicated, used, or disclosed, in whole or in part, for any purpose other than to analyze information contained in this submission, except to the extent permitted or required by law. This restriction does not limit the Government's right to use information contained in these data if it is obtained from another source without restriction. The data that are subject to this restriction are contained in sheets \_\_\_\_\_ [insert page numbers or other identification of sheets].

### Submission Preparation Costs

The Department of Energy is not able to reimburse respondents for any costs associated with the preparation of Statements of Interest or informational proposals.

Issued in Washington, D.C., on November 10, 1994.

Patricia Fry Godley,  
Assistant Secretary for Fossil Energy.

BILLING CODE 6450-01-P

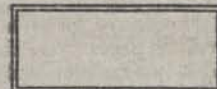


COPY N°

U.S. DEPARTMENT OF ENERGY

Appendix A

DOE USE ONLY

PROGRAM ANNOUNCEMENT  
forSolicitation of Expressions of Interest in Commercial  
Clean Coal Technology Projects in Foreign Countries

## STATEMENT/PROPOSAL COVER SHEET

(1) Technology(ies): \_\_\_\_\_

(2) Federal Incentive: \_\_\_\_\_

(3) Title: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) Project Location: \_\_\_\_\_

(5) Respondent: \_\_\_\_\_  
\_\_\_\_\_(6) Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(7) City: \_\_\_\_\_ (8) State: \_\_\_\_\_ (9) Zip: \_\_\_\_\_

(10) Primary Contact: \_\_\_\_\_

(11) Phone No.: ( ) \_\_\_\_\_ (12) Fax No.: ( ) \_\_\_\_\_

(13) Does this submittal contain proprietary or business-confidential  
information? Circle: YES or NOIf you answer YES, insert the "Notice re Restriction on Disclosure and  
Use of Data" (provided in the Program Announcement) in the box below:

## NOTICE RE RESTRICTION ON DISCLOSURE AND USE OF DATA

Appendix B

U.S. DEPARTMENT OF ENERGY

PROGRAM ANNOUNCEMENT  
for

Solicitation of Expressions of Interest in Commercial  
Clean Coal Technology Projects in Foreign Countries

PUBLIC ABSTRACT

(1) Technology(ies): \_\_\_\_\_

(2) Federal Incentive: \_\_\_\_\_

(3) Title: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(4) Respondent: \_\_\_\_\_

\_\_\_\_\_

(5) Abstract:

## U.S. DEPARTMENT OF ENERGY

PROGRAM ANNOUNCEMENT  
forSolicitation of Expressions of Interest in Commercial  
Clean Coal Technology Projects in Foreign Countries

## PROJECT SUMMARY

- (1) Technology(ies): \_\_\_\_\_
- (2) Federal Incentive: \_\_\_\_\_
- (3) Project Title: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- (4) Respondent: \_\_\_\_\_
- \_\_\_\_\_
- (5) Mailing Address: \_\_\_\_\_
- \_\_\_\_\_
- (6) City: \_\_\_\_\_ (7) State: \_\_\_\_\_ (8) Zip: \_\_\_\_\_
- (9) Primary Contact: \_\_\_\_\_
- (10) Phone No.: ( ) \_\_\_\_\_ (11) Fax No.: ( ) \_\_\_\_\_
- (12) Project Location: \_\_\_\_\_
- (13) Host Country: \_\_\_\_\_
- (14) Applicability: \_\_\_\_\_
- \_\_\_\_\_
- (15) Source(s) of Coal: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

## Appendix C Contd.

Solicitation of Expressions of Interest in Commercial  
Clean Coal Technology Projects in Foreign Countries

## PROJECT SUMMARY CONTINUED

(16) Project Size: \_\_\_\_\_

(17) Environmental Performance: \_\_\_\_\_

(18) Project Duration: \_\_\_\_\_

(19) Estimated Total Cost of the Project: \_\_\_\_\_

(20) Government's Incentive Cost: \_\_\_\_\_

(21) Commercialization Potential in Host Country: \_\_\_\_\_

(22) Global Commercialization Potential: \_\_\_\_\_

(23) Notes or Comments (Optional): \_\_\_\_\_

[FR Doc. 94-28566 Filed 11-17-94; 8:45 am]  
BILLING CODE 6450-01-C

### Rebuild America Program; Solicitation for Financial Assistance Applications

**AGENCY:** Department of Energy.

**ACTION:** Notice of solicitation for financial assistance applications number DE-PS36-95GO10053.

**SUMMARY:** The U.S. Department of Energy (DOE), through the Rebuild America Program, announces its intention to issue a competitive solicitation and make multiple awards to regional or community wide public/private sector groups to accelerate the use of cost-effective energy efficiency improvements in commercial and multifamily residential housing. This action is subject to the DOE Financial Assistance Rules, which can be found in Title 10 of the Code of Federal Regulations (10 CFR part 600).

**AVAILABILITY OF THE SOLICITATION:** To obtain a copy of the solicitation once it is issued in December 1994, write to the U.S. Department of Energy's Golden Field Office, 1617 Cole Blvd, Golden, CO, 80401, Attn: Mr. Matt Barron, Contract Specialist. Only written requests for the solicitation will be honored. For convenience, requests for the solicitation may be faxed to Mr. Barron at (303) 275-4790. For further information concerning the Rebuild America Program, contact the Energy Efficiency and Renewable Energy Clearinghouse (EREC), PO Box 3048, Merrifield, VA, 22116. Telephone: (800) 363-3732.

**SUPPLEMENTARY INFORMATION:** The DOE Office of Building Energy Research, under authority of section 2104 of the Energy Policy Act of 1992, Pub. L. 102-486, seeks to substantially increase the energy efficiency of existing commercial buildings by the year 2005. This solicitation is part of Action #1 of the Administration's Climate Change Action Plan to reduce energy use in buildings and lower greenhouse gas emissions.

The objective of this solicitation is to make multiple financial assistance awards to public/private sector groups that are expected to accelerate the use of cost-effective energy efficiency measures in commercial and multifamily residential housing. Awardees will be expected to: Apply retrofit energy efficiency improvements to a large portion of the total floorspace in existing commercial and multifamily buildings within a community or region not later than five years after award date of the cooperative agreement; improve the energy efficiency of buildings

treated under the cooperative agreement by an average of at least 25 percent; integrate and enhance existing energy efficiency improvement programs in their community or region and capital investment resources, including the U.S. Environmental Protection Agency's "Energy Star Buildings Program", to support the implementation of their energy efficient retrofits; and ensure that the activities initiated through the group will continue without further DOE funding.

DOE will consider for award those entities that represent a consortium of private sector firms and the public sector which could include partnerships, joint ventures or other business relationships between such entities as profit and non-profit corporations, business partnerships, educational institutions, etc. but must include a state or local government organization. Other requirements of the solicitation will include that: (1) An organization's participation must be shown to be in the economic interest of the United States; and (2) the awardee must cost share at least 50% of the total project costs from non-federal sources in order to receive an award under the solicitation.

Applicants will be expected to customize their program approaches to fit their community's needs and capabilities. Awards under this solicitation will be Cooperative Agreements. The term of the awards may be for up to five years. Total DOE funding available for awards is approximately \$5.5-\$6.5 million which will be divided among the awardees. The solicitation will be issued in December 1994, and will contain detailed information on funding, cost sharing requirements, eligibility, application preparation, and evaluation. Responses to the solicitation will be due 120 days after solicitation release.

Issued in Golden, Colorado, on November 10, 1994.

**John W. Meeker,**

*Chief, Procurement, GO.*

[FR Doc. 94-28565 Filed 11-17-94; 8:45 am]

BILLING CODE 6450-01-M

### Office of Fossil Energy

[Docket No. FE C&E 94-10 & 94-11—  
Certification Notice—138]

### Cherokee County Cogeneration Partners, L.P. (C&E 94-10), and Klickitat Energy Partners (C&E 94-11) Notice of Filing of Coal Capability Powerplant and Industrial Fuel Use Act

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filing.

**SUMMARY:** The Office of Fossil Energy has received two coal capability self certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act. One was submitted by Cherokee County Cogeneration Partners, L.P. on October 27, 1994; the other was submitted by Klickitat Energy Partners on October 28, 1994.

**ADDRESSES:** Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, Room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell at (202) 586-9624.

**SUPPLEMENTARY INFORMATION:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the *Federal Register* that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed self-certifications in accordance with section 201(d).

**Owner:** Cherokee County Cogeneration Partners, L.P. (C&E 94-10), New York, NY

**Operator:** Cherokee County Cogeneration Corp., New York, NY

**Location:** Near the town of Gaffney, South Carolina

**Plant Configuration:** Topping cycle cogeneration

**Capacity:** 80 megawatts  
**Fuel:** Natural gas  
**Purchasing Utilities:** Duke Power Company  
**In-Service Date:** Fourth Quarter, 1996  
**Owner:** Klickitat Energy Partners (C&E 94-11), Portland, Oregon  
**Operator:** Stewart & Stevenson, Houston, TX  
**Location:** Bingen, Washington  
**Plant Configuration:** Combined cycle cogeneration  
**Capacity:** 54 megawatts  
**Fuel:** Natural gas  
**Purchasing Utilities:** Bonneville Power Administrator  
**In-Service Date:** March, 1996.

Issued in Washington, DC., November 14, 1994.

**Anthony J. Como,**

*Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.*  
 [FR Doc. 94-28568 Filed 11-17-94; 8:45 am]

**BILLING CODE 6450-01-P**

#### **Office of Contractor Employee Protection; Availability of New Whistleblower Initiatives**

**AGENCY:** Department of Energy.  
**ACTION:** Notice of availability and request for comment.

**SUMMARY:** The Department of Energy today is giving notice that new Whistleblower Initiatives are available for public comment. The Initiatives are designed to strengthen the ability of the DOE's Federal and contractor employees to raise concerns relating to waste, fraud, or abuse; environment; safety and health; and other matters. Written comments provided during this period will be considered in the formulation of the final policies.

**DATES:** Parties wishing to comment on the Initiatives should do so in writing to the address given below by December 19, 1994.

**ADDRESSES:** Written comments are to be submitted to the Office of Contractor Employee Protection, FM-40, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

A copy of the Initiatives is on display at the Department of Energy Reading Room, Room Number 1E-190, 1000 Independence Avenue, SW., Washington, DC 20585. The Reading Room is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, except for federal holidays. A copy of the Initiatives also may be obtained by calling (202) 586-8289.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Schneider or Richard S. Fein (202) 586-8289.

**SUPPLEMENTARY INFORMATION:** The issuance of the new Initiatives follows through on a commitment the Secretary of Energy made at the June 27, 1994, openness press conference to assure that DOE federal and contractor employees may express their views without fear of reprisal. The proposals include (1) measures to ensure that whistleblowers are not retaliated against by misuse of security clearance procedures; (2) provisions to limit the payment of contractor litigation costs in whistleblower cases; (3) enhanced use of alternative dispute resolution; (4) plans for an independent organization to conduct a comprehensive study of old cases to determine possible mechanisms "to right past wrongs," and (5) establishment of an enhanced Department of Energy Employee Concerns Program.

The Department has been encouraged by a number of successes that have been achieved since Secretary O'Leary met with 30 whistleblowers in November of last year. These have included settlement of long-standing whistleblower complaints, resolution of security clearance issues, and ending contractor appeals in on-going litigation. The new Initiatives are intended to implement fully the Department's policy of "Zero Tolerance for Reprisal."

Issued in Washington, D.C., on November 14, 1994.

**Sandra L. Schneider,**

*Director, Office of Contractor Employee Protection.*

[FR Doc. 94-28567 Filed 11-17-94; 8:45 am]

**BILLING CODE 6450-01-P**

#### **Federal Energy Regulatory Commission**

[Docket No. QF95-17-000]

#### **Foster Wheeler Penn Resources, Inc.; Notice of Application for Commission Certification of Qualifying Status of a Small Power Production Facility**

November 7, 1994.

On October 28, 1994, Foster Wheeler Penn Resources, Inc. c/o Foster Wheeler Power Systems, Inc., Perryville Corporate Park, Clinton, NJ 08809-4000, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to Section 292.207(a) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility, which will be located in Newport Township, Luzerne County, Pennsylvania, will consist of a

boiler and a steam turbine generator. The net electric power production capacity of the facility will be approximately 40 MW. The primary energy source of the facility will be biomass in the form of wood waste.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the *Federal Register* and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 94-28492 Filed 11-17-94; 8:45 am]

**BILLING CODE 6717-01-M**

[Docket No. EL95-2-000, et al.]

#### **National Electric Associates Ltd Partnership, et al.; Electric Rate and Corporate Regulation Filings**

November 9, 1994.

Take notice that the following filings have been made with the Commission:

#### **1. Boston Edison Company v. Commonwealth Energy System and Canal Electric Company**

[Docket No. EL95-2-000]

Take notice that on October 4, 1994, pursuant to Section 206 of the Federal Power Act and Rule 208 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, Boston Edison Company (Edison) filed a petition for investigation and complaint against Commonwealth Energy System and Canal Electric Company (Commonwealth). According to the complaint, Commonwealth has billed Edison for 1992 and 1993 contract year charges for Edison's 25% entitlement in the Canal 1 power plant, which charges are unjust, unreasonable, excessive and contrary to the terms of the contract between Edison and Commonwealth.

Comment date: December 9, 1994, in accordance with Standard Paragraph E at the end of this notice.

**2. National Electric Associates Limited Partnership**

[Docket No. ER90-168-018]

Take notice that on October 28, 1994, National Electric Associates Limited Partnership (NEA) filed certain information as required by the Ordering Paragraph (L) of the Commission's March 20, 1990 order in Docket No. ER90-168-000. Copies of NEA's informational filing are on file with the Commission and are available for public inspection.

**3. Enron Power Marketing, Inc.**

[Docket No. ER94-24-005]

Take notice that on November 1, 1994, Enron Power Marketing, Inc. (EPMI) filed certain information as required by the Commission's December 2, 1993, letter order in Docket No. ER94-24-000. Copies of EPMI's informational filing are on file with the Commission and are available for public inspection.

**4. AES Power, Inc.**

[Docket No. ER94-890-003]

Take notice that on November 1, 1994, AES Power, Inc. filed certain information as required by the Commission's April 8, 1994, letter order in Docket No. ER94-890-000. Copies of AES Power, Inc.'s informational filing are on file with the Commission and are available for public inspection.

**5. Idaho Power Company**

[Docket No. ER94-1343-000]

Take notice that on November 1, 1994, Idaho Power Company (IPC) tendered for filing a Certificate of Concurrence from Enron Power Marketing, Inc. to the Service Agreement between Enron Power Marketing, Inc. and Idaho Power Company under Idaho Power's FERC Electric Tariff Second Revised Volume No. 1.

Comment date: November 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

**6. Coastal Electric Services**

[Docket No. ER94-1450-001]

Take notice that on October 31, 1994, Coastal Electric Services (CES) filed certain information as required by the Commission's September 29, 1994, letter order in Docket No. ER94-1450-000. Copies of CES's informational filing are on file with the Commission and are available for public inspection.

**7. Ohio Edison Company**

[Docket No. ER94-1594-000]

Take notice that on November 3, 1994, Ohio Edison Company tendered

for filing an amendment in the above-referenced docket.

Comment date: November 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

**8. Maine Yankee Atomic Power Company**

[Docket No. ER94-1699-000]

Take notice that Maine Yankee Atomic Power Company on October 28, 1994, tendered for filing an amendment to its rate filing of September 29, 1994, in Docket No. ER94-1699-000. The amendment provides an affirmative statement that Maine Yankee has created an irrevocable external trust that meets the requirements of the FERC Policy Statement for funding post-retirement benefits other than pensions.

Copies of the amendment were served upon Maine Yankee's jurisdictional customers, secondary customers, and the Massachusetts Department of Public Utilities, Vermont Public Service Board, Connecticut Public Utilities Control Authority, Maine Public Utilities Commission, New Hampshire Public Utilities Commission and Office of the Public Advocate, State of Maine.

Comment date: November 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

**9. New York State Electric & Gas Corporation**

[Docket Nos. ER95-44-000 and EC95-2-000]

Take notice that on November 1, 1994, New York State Electric & Gas Corporation (NYSEG), tendered for filing: (1) a request for authorization to sell facilities used for transmission of electric energy in interstate commerce, pursuant to Section 203(a) of the Federal Power Act, and (2) an amendment to its Agreement with Niagara Mohawk Power Corporation (NMPC), designated NYSEG Rate Schedule FERC No. 90, pursuant to Section 205(b) of the Federal Power Act.

The filings concern the sale (the Transaction) of 10.04 miles of 69 Kv electric transmission line and certain related facilities and property rights to NMPC; and an amendment to a facilities charge agreement. To the extent necessary, NYSEG requests waiver of the notice requirements so that the Transaction may take place and the amendment may become effective in accordance with the terms of the amendment.

Copies of the filing were served upon the Niagara Mohawk Power Corporation and on the Public Service Commission of the State of New York.

Comment date: November 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

**10. Northeast Utilities Service Company**

[Docket No. ER95-92-000]

Take notice that on October 31, 1994, Northeast Utilities Service Company ("NUSCO") tendered for filing, on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), and Public Service Company of New Hampshire (together, the "NU System Companies"), a First Amendment to System Power Sales Agreement ("Amendment") with Bozrah Light and Power Company ("BL&P") and a Service Agreement between NUSCO and the NU System Companies for service under NUSCO's Short-Term Firm Transmission Service Tariff No. 5. The transaction extends the System Power Sale through November 30, 1994.

NUSCO requests that the rate schedule become effective on November 1, 1994. NUSCO states that copies of the rate schedule have been mailed or delivered to the parties to the Amendment and the affected state utility commissions.

Comment date: November 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

**11. New England Power Company**

[Docket No. ER95-93-000]

Take notice that on October 31, 1994, New England Power Company (NEP) tendered for filing a revised Service Agreement between NEP and Braintree Electric Light Department for transmission service under NEP's FERC Electric Tariff, Original Volume No. 3.

Comment date: November 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

**12. New England Power Company**

[Docket No. ER95-102-000]

Take notice that on October 31, 1994, New England Power Company (NEP) tendered for filing a Unit Power Sale Contract with Bangor Hydro Electric Company.

Comment date: November 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

**13. Portland General Electric Company**

[Docket No. ER95-103-000]

Take notice that Portland General Electric Company (PGE), on October 31, 1994, tendered for filing its Average System Cost (ASC) as calculated by PGE and determined by the Bonneville Power Administration under the revised ASC Methodology which became effective on October 1, 1994. This filing includes PGE's revised Appendix 1 of

#### the Residential Purchase and Sale Agreement.

PGE states that the revised Appendix 1 shows the ASC to be 34.42 mills/Kwh effective April 15, 1994. The Bonneville Power Administration determined the ASC rate for PGE to be 34.42 mills/Kwh.

Copies of the filing have been served on the persons named in the transmittal letter as included in the filing.

Comment date: November 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 14. South Carolina Electric & Gas Company

[Docket No. ER95-104-000]

Take notice that South Carolina Electric & Gas Company on October 31, 1994, tendered for filing Modification No. 3 to Rate Schedule FPC No. 33 between SCE&G and Public Service Authority (SCPSA).

This modification makes this agreement consistent with the Operating Guidelines of the North American Electric Reliability Council (NERC).

Copies of this filing were served upon South Carolina Public Service Authority.

Comment date: November 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 15. Boston Edison Company

[Docket No. ER95-110-000]

Take notice that on October 31, 1994, Boston Edison Company (Edison) of Boston, Massachusetts, filed a "Third Extension Agreement" for sub-transmission service to New England Power Company pursuant to Edison's FPC Rate Schedule No. 46. The agreement extends the termination date of Rate Schedule No. 46 from December 31, 1994 to May 31, 1995. The agreement also provides for reductions in NEP's monthly payments to Edison during the extension period. The agreement makes no other changes to the terms and conditions of the affected rate schedule. Edison requests that this filing become effective 60 days from date of filing with the Commission.

Edison states that it has served copies of this filing on New England Power Company. Edison further states that this filing has been posted in accordance with the Commission's regulations.

Comment date: November 25, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E.,

Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-28493 Filed 11-17-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER89-401-020]

#### Citizens Power & Light Corp.; Notice of Informational Filing

November 14, 1994.

Take notice that on November 4, 1994, Citizens Power & Light Corporation (CP&L) filed certain information as required by the Commission's August 8, 1989 letter order in Docket No. ER89-401-000. Copies of CP&L's informational filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94-28527 Filed 11-17-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER94-916-000]

#### Southern Indiana Gas & Electric Co.; Notice of Filing

November 9, 1994.

Take notice that on October 21, 1994, Southern Indiana Gas and Electric (SIGECO) tendered for filing cost information in support of its December 21, 1993, filing in the captioned docket, which requested a one (1) year extension of the FPC Rate Schedule No. 29 between SIGECO and Alcoa Generating Corporation (AGC).

The filing of the cost information is in response to the Commission's request for information concerning SIGECO's Rate Schedule RS, which was used as a price cap on standby electrical energy sales from SIGECO to AGC under FPC Rate Schedule No. 29.

Waiver of the Commission's Notice Requirements is requested to allow for an effective date of January 12, 1994, as was requested in the December 21, 1994 filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 21, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-28526 Filed 11-17-94; 8:45 am]

BILLING CODE 6717-01-M

#### Office of Hearings and Appeals

##### Notice of Issuance of Decisions and Orders During the Week of August 8 Through August 12, 1994

During the week of August 8 through August 12, 1994, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Refund Applications

Reynolds Metals Company, 8/11/94, RR272-98

The Department of Energy considered a request for reconsideration of a previous denial of an Application for Refund filed by Reynolds Metals Company in the crude oil overcharge refund proceeding. The claim was based on Reynolds' purchases of petroleum coke and petroleum pitch. The DOE found that Reynolds was eligible for a refund based on purchases of these products because the firm demonstrated that they were purchased from a crude oil refinery. The DOE did not adopt Reynolds' methods for converting the tons of petroleum coke it purchased into gallons. Since the firm did not show that its conversion factor of 6.62854 pounds per gallon was more accurate than the previously-accepted figure of 4.99 barrels per ton, the DOE adopted that latter figure in order to convert the tonnage into gallons. Reynolds received a refund of \$1,027,047 based on its receipt of 6,125,626 tons (1,283,808,708

gallons) of coke. It also received a refund of \$13,644 for its purchases of petroleum pitch.

*Texaco Inc./By-Pass Texaco, et al., 8/11/94 RF321-19212, et al.*

Applications for Refund were filed in the Texaco Inc. special refund proceeding on behalf of four former Texaco retailers who could not locate sufficient records to prepare schedules of their monthly purchases of Texaco gasoline. The claims were based on purchase volume estimates obtained using information provided by the applicants in conjunction with data from *Platt's Oil Price Handbook and Almanac (Platt's)*. In considering these claims, the DOE found that the

estimates were inflated in three cases, and understated in one case. The DOE substituted a different estimation method, also using data from *Platt's* and the information provided by the applicants. On the basis of the alternative methodology, the DOE issued a Decision and Order granting the Applications.

*Texaco Inc./State of Missouri, 8/11/94 RR321-163*

The DOE issued a Decision and Order denying a Motion for Reconsideration filed on behalf of the State of Missouri in the Texaco Inc. special refund proceeding. The DOE found that Missouri had not shown any reason why

the DOE should revise its determination and accept the state's method of estimating its purchases of Texaco motor gasoline. The DOE also determined that the fact that this type of estimation technique may have been accepted in the ARCO and Gulf II proceeding did not mean that it should be accepted in Texaco.

#### Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Boulevard Car Wash, Inc. et al .....	RF304-13750	08/12/94
Atlantic Richfield Company/Cofax Arco Mini Mart et al .....	RF304-14064	08/09/94
Gulf Oil Corporation/Arrow Lakes Dairy .....	RF300-15606	08/11/94
Gulf Oil Corporation/Chappell's Gulf #2 .....	RF300-14319	08/11/94
Chappell's Gulf #3 .....	RF300-14320	
Gulf Oil Corporation/City Gulf Service .....	RR300-218	08/11/94
Gulf Oil Corporation/R & R Gulf Service et al .....	RF300-18818	08/08/94
Hale Center I.S.D. et al .....	RF272-82039	08/12/94
Nance and Collums, Inc. et al .....	RF272-78465	08/11/94
Solomon & Teslovich et al .....	RF272-67783	08/08/94
Terminal Taxi Company .....	RF272-55462	08/09/94
Terminal Taxi Company .....	RD272-55462	
Texaco Inc./Cal's Texaco Service et al .....	RF321-20400	08/11/94
Texaco Inc./Gaines Texaco et al .....	RF321-270	08/12/94
Texaco Inc./Greenway Grocery et al .....	RF321-10402	08/12/94
Texaco Inc./National Fuel Oil, Inc. et al .....	RF321-12971	08/09/94
Whitaker Oil Co./American Synthetic Rubber Corp. et al .....	RF351-17	08/12/94

#### Dismissals

The following submissions were dismissed:

Name	Case No.
Cloverleaf Texaco .....	RF321-19214
Hy-C-Tane Corporation .....	LEE-0136
Reggie's Texaco Service .....	RF321-11196
Sam's Arco .....	RF304-15232
Seely's Service Station, Inc. ....	RF300-21397

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: November 14, 1994.

George B. Breznay,

Director Office of Hearings and Appeals.

[FR Doc. 94-28569 Filed 11-17-94; 8:45 am]

BILLING CODE 6450-01-P

#### Notice of Issuance of Decisions and Orders During the Week of August 15 through August 19, 1994

During the week of August 15 through August 19, 1994, the decisions and orders summarized below were issued with respect to applications for refund or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Appeals

Kenneth H. Besecker, 8/19/94, LFA-0404

Kenneth H. Besecker filed an Appeal from a determination issued by the DOE's Office of Civil Rights in response

to his request under the Freedom of Information Act. In denying the Appeal, the DOE found that there was no basis for believing that responsive documents had been withheld. The DOE also found that the Office of Civil Rights had adequately searched for documents.

Wayne M. Cooper, 8/16/94, LFA-0403

Wayne M. Cooper filed an Appeal from a determination issued by the Deputy Assistant Secretary for Human Resources of the Department of Energy (DOE/HR), in response for information under the Freedom of Information Act (FOIA). Cooper sought records relating to the 1993 Senior Executive Service Candidate Development Program (SESCDP). In considering the Appeal, the DOE found that: (1) DOE/HR properly withheld a list of 50

recommended selectees to the 1993 SESCO under the deliberative process element of FOIA Exemption 5 because the list represented only a recommendation to the Secretary of Energy, and thus was reflective of the deliberative process of the agency prior to arriving at a final decision; (2) DOE/HR properly withheld under Exemption 6 the disability status and ethnic background because the significant privacy interests of the selectees in the withheld information outweighed the negligible contribution of disclosure of this information to the public understanding of government operations and activities; and (3) DOE/HR should consult with Cooper to find out whether he wishes to obtain certain responsive documents that were not provided to him. The matter was therefore remanded to DOE/HR for the purpose of providing the appellant with additional responsive documents. In all other respects, the Appeal was denied.

#### Requests for Exception

*Consolidated Oil & Gas, Inc., 8/19/94, LEE-0109*

Consolidated Oil & Gas, Inc. (Consolidated) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file form EIA-23, the "Annual Survey of Domestic Oil & Gas Reserves". On May 24, 1994, the DOE issued a Proposed Decision and Order tentatively determining that the firm was not suffering gross inequity or serious hardship and that the exception request should therefore be denied. Consolidated objected to the Proposed Decision and Order, stating that filing was unduly burdensome and that the DOE was arbitrary in its selection of Consolidated to file the form. The DOE issued a Final Decision and Order determining that the objections raised by Consolidated did not warrant exception relief. Therefore, Consolidated's Application for Exception was denied.

*Hunt Oil Co., 8/15/94, LEE-0086*

Hunt Oil Co. filed an Application for Exception for the provisions of the EIA reporting requirement, in which the firm sought relief from filing Form EIA-

782B. In considering the request, the DOE found that exception relief was necessary to alleviate an undue hardship on the firm caused by new regulations enacted by the State of Idaho. Accordingly, a limited form of exception relief was granted until August 1, 1994, after which the new state regulations would become final and the Applicant could comply with all applicable rules.

*Phillipsburg Cooperative Assn., 8/15/94, LEE-0099*

The Phillipsburg Cooperative Association (Phillipsburg) filed an Application for Exception from the provisions of the Energy Information Administration (EIA) reporting requirements in which the firm sought relief from filing Form EIA-782B, entitled "Resellers/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Phillipsburg was suffering a gross inequity due to its precarious financial condition. Accordingly, the DOE determined that exception relief should be granted which relieves Phillipsburg of those reporting requirements. However, due to the impermanence of Phillipsburg's financial situation, the exception relief granted will be effective for a period of two years. At that time, if Phillipsburg wishes to receive continued exemption from filing requirements, it must reapply with the DOE. Accordingly, the Application was granted until September 30, 1996.

#### Refund Applications

*Texaco Inc./Eastland Texaco, 8/19/94, RF321-21021*

The DOE issued a Supplemental Order regarding an Application for Refund in the Texaco Inc. special refund proceeding which had been previously granted on March 1, 1993. In that Decision, the DOE granted a refund to John Clark (Clark) for 825,311 gallons of Texaco products he claimed to have purchased as the owner of Eastland Texaco. The DOE subsequently received a refund application from Clark's three siblings, who claimed that it was their father, John Clark, Sr., who had actually operated Eastland Texaco during the refund period. The three siblings also

argued that the residuary clause of their father's will entitled them to a portion of any refund granted based upon their father's purchases of Texaco products. In response, Clark argued that because his three siblings had improperly enjoyed the use of his deceased father's home, and because he had incurred all of the expenses in filing the application, he was entitled to the entire refund. The DOE determined that because Clark failed to demonstrate that he had a clear right to the refund, the father's will was determinative on the issue of who was entitled to the refund. Because the residuary clause of the will provided that Clark and each of his siblings would equally share the residue of the father's estate, the DOE determined that Clark had improperly received his siblings' portions of the refund. Consequently, the DOE directed Clark to repay \$988, representing \$944 in principal and \$44 in interest.

*Texaco Inc./Palm Desert Texaco, 8/19/94, RF321-21023*

A refund based upon the Texaco product purchases of the previous owners of Palm Desert Texaco was erroneously sent to the current owner of the outlet. At the request of the Office of Hearings and Appeals (OHA), the refund was returned and the DOE issued a new refund check to the former owners. Subsequently, the U.S. Treasury reclaimed the amount of the refund directly from the service station's checking account, where the present owner had deposited the first refund. Under the circumstances, the OHA determined that the most expeditious way to reimburse the service station's owner for the duplicate repayment was to issue a Decision and Order directing the payment of a refund check to him.

#### Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Ciarolla's Arco et al .....	RF304-14648	08/19/94
Atlantic Richfield Company/Richfield Service et al .....	RF304-14386	08/16/94
Atlas Roofing Corporation .....	RF272-94055	08/16/94
B&B Vending Co. et al .....	RF272-93600	08/15/94
Berks Mutual Leasing Corp. et al .....	RF272-94100	08/19/94
City of Plymouth, Michigan et al .....	RF272-85283	08/19/94
Consolidation Coal Company et al .....	RF272-94413	08/16/94
Gulf Oil Corporation/Matkin Oil Co .....	RF300-8794	08/16/94
Gulf Oil Corporation/McGraw-Edison Power Systems .....	RR300-201	08/19/94
Frankenmuth Oil Co .....	RR300-204	
Gulf Oil Corporation/P & D Service #1 .....	RF300-17716	08/19/94

P & D Service #2 .....	RF300-20246	
P & D Service #2 .....	RF300-20247	
P & D Service #1 .....	RF300-20493	
Gulf Oil Corporation/R. Keith Martin, Distributor .....	RF300-21794	08/16/94
Gulf Oil Corporation/Tri-State Canada Dry et al .....	RF300-13207	08/16/94
J.H. Rose Truck Line, Inc .....	RF272-77309	08/19/94
Sweetwater Union High School Dist. et al .....	RF272-86503	08/19/94
Texaco Inc./Allison Lane Texaco et al .....	RF321-6105	08/19/94
Texaco Inc./Chuck's Texaco Service .....	RF321-21020	08/16/94
Texaco Inc./Grover's Texaco .....	RF321-21022	08/19/94
Tomahawk Services, Inc .....	RF272-66027	08/19/94
Rappleye Trucking, Inc .....	RF272-68557	
Tomahawk Services, Inc .....	RD272-66027	

## Dismissals

The following submissions were dismissed:

Name	Case No.
Alumax Mill Products, Inc .....	RF272-92470
American Home & Hardware .....	RF300-19633
Farm Service, Inc .....	RF321-20502
Four Buttes Farmers Elevator Co .....	RF272-94866
Hawk Oil Company .....	LEE-0139
Heck's Texaco Service .....	RF321-11333
J.S. Hough Fuel Service, Inc .....	RF300-20416
Kraft General Foods, Inc .....	RF321-20504
Lebeouf Bros. Towing Co, Inc .....	RF321-20114
New Enterprise Stone & Lime Co., Inc .....	RF321-20509
Ortonville Ind. School Dist. #62 .....	RF321-20116
Q/T/S/ Oil Company .....	RF304-13715
Rice Texaco .....	RF321-1248
Summers-Taylor, Inc .....	RF321-20507
The Outpost Station and Country Store .....	LEE-0120
Ullman Oil Company .....	LEE-0102
Wheels, Inc .....	RF321-20499

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: November 14, 1994.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

[FR Doc. 94-28570 Filed 11-17-94; 8:45 am]

BILLING CODE 6450-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-5108-1]

### Proposed Settlement, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, notice is

hereby given of a proposed Consent Decree in the following cases: *Sierra Club v. EPA*, No. 94-0553(PLF) (D.D.C.) and *Sierra Club v. EPA*, No. 94-0954(PLF) (D.D.C.).

These actions involve a lawsuit filed under section 304(a)(2) of the Clean Air Act, 42 U.S.C. 7604(a)(2). These actions involve allegations concerning EPA's obligations under various sections of the Clean Air Act as amended in 1990. In particular, these actions involve allegations with respect to various actions for which the Administrator was allegedly under a non-discretionary to complete on or before November 15, 1993.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Clean Air Act.

A copy of the proposed consent decree was lodged with the clerk of the

United States District Court for the District of Columbia on October 28, 1994. Copies are also available by calling Phyllis J. Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 260-7606. Written comments should be sent to Robert J. Martineau, Jr., at the above address and must be submitted on or before December 19, 1994.

Dated: November 7, 1994.

**Jean C. Nelson,**

*General Counsel.*

[FR Doc. 94-28549 Filed 11-17-94; 8:45 am]

BILLING CODE 6560-50-P

[ER-FRL-4717-4]

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 31, 1994 Through November 04, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments

can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 08, 1994 (59 FR 16807).

#### Draft EISs

ERP No. D-BLM-K67025-NV Rating EO2, Cortez Pipeline Gold Deposit Project, Development, Construction and Operation of an Open-Pit Mine, Plan of Operations Approval, Right-of-Way Permits and COE Section 404 Permit, Lander County, NV.

**SUMMARY:** EPA expressed environmental objections due to potential impacts to surface water quality and quantity. EPA urged the preparation of a revised draft EIS and noted that BLM should provide additional documentation on hydrogeology, potential impacts to groundwater, surface water and habitat; mitigation and contingency measures; facilities designs; and closure of the heap leach pad/tailings impoundment facility.

ERP No. D-FHW-E40753-KY Rating EC2, US 119 Highway Transportation Project, Construction or Reconstruction, from Partridge to Whitesburg, Funding and COE Section 404 Permit, Letcher County, KY.

**Summary:** EPA expressed environmental concerns with all alternatives. Specific impact mitigation will be needed once a preferred alignment is selected.

ERP No. D-NPS-K61133-CA Rating LO1, Joshua Tree National Monument General Management Plan and Development Concept Plans, Implementation, Riverside and San Bernardino Counties, CA.

**Summary:** EPA expressed a lack of objections with the proposed General Management Plan. However, EPA suggested that the Final EIS give specific information on identified topics and clarification of the impacts.

#### Final EISs

ERP No. F-AFS-K65152-CA Hamm-Hasloe Reforestation Project, Implementation, Stanislaus National Forest, Groveland Ranger District, Tuolumne and Mariposa Counties, CA.

**Summary:** EPA expressed environmental objections with the draft EIS which were not adequately responded to in the final EIS. The final EIS should have clearly stated the affects of multiple applications of herbicides which will occur and address possible impacts to human health and wildlife, cumulative impacts, and impacts of all other foreseeable reforestation projects. EPA recommended the preparation of a

supplemental EIS and that other alternatives be considered.

Dated: November 15, 1994.  
Richard E. Sanderson,  
Director, Office of Federal Activities.  
[FR Doc. 94-28560 Filed 11-17-94; 8:45 am]  
BILLING CODE 6560-50-U

[ER-FRL-4716-9]

#### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 24, 1994 Through October 28, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 08, 1994 (59 FR 16807).

\*\*\* NOTE: DUE TO CIRCUMSTANCES BEYOND OUR CONTROL \*\*\* THIS ENVIRONMENTAL IMPACT STATEMENTS AND REGULATIONS, AVAILABILITY OF EPA COMMENTS WAS NOT PUBLISHED IN THE NOVEMBER 4, 1994 FEDERAL REGISTER. \*\*\*

#### Draft EISs

ERP No. D-FHW-K40207-CA Rating LO, CA-41 Route Adoption of Alignment Project, between El Paso Avenue and CA-145, Funding, Right-of-Way Acquisition and COE Section 404 Permit, Fresno and Madera Counties, CA.

**Summary:** EPA expressed a lack of objections with the draft EIS, it noted that the rating does not preclude EPA from having future comments on site-specific environmental impacts and mitigation that may be identified or required during the Tier II NEPA review.

ERP No. DR-COE-K35035-CA Rating EO2, San Gabriel Canyon Sediment Management Plan, Dredging and Disposal of Sediments, Revised Information, COE Section 404 Permit, Special Use Permit and Right-of-Entry Issuance, Angeles National Forest, San Gabriel River, Los Angeles County, CA.

**Summary:** EPA expressed environmental objections due to potential adverse impacts to riparian habitat, aquatic biota, biodiversity and water quality. EPA recommended that upstream sediment management techniques and reservoir operation be included to help avoid potential adverse impacts.

#### Final EISs

ERP No. F-COE-G30013-LA West Bank of the Mississippi River Hurricane Protection Plan, Implementation, east of the Harvey Canal, New Orleans, LA.

**Summary:** EPA had no objection to the proposed action.

ERP No. F-FHW-G40129-AR US 67 Construction, US 67/167 to I-40 West/I-430 Interchange around the North Little Rock Metropolitan Area, Funding, Pulaski County, AR.

**Summary:** EPA concurs with the selection of Alternative 1 as the preferred alternative. Based upon our review of the information presented, we find that all areas of EPA responsibilities and concerns have been adequately addressed in the final EIS.

ERP No. F-NRC-G06008-LA Claiborne Uranium Enrichment Center, Construction and Operation, (NUREG-1482), NPDES Permit and Licensing, Homer, Claiborne Parish, LA.

**Summary:** EPA expressed environmental concern that the analysis did not provide assurance that the facility siting and operation would not result in significant disproportionate adverse impact upon the local communities.

Dated: October 31, 1994.  
Richard E. Sanderson,  
Director, Office of Federal Activities.  
[FR Doc. 94-28562 Filed 11-17-94; 8:45 am]  
BILLING CODE 6560-50-P

[ER-FRL-4717-3]

#### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Weekly receipt of Environmental Impact Statements Filed November 7, 1994 Through November 10, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940453, Final EIS, USA, CA, Sacramento Army Depot Disposal and Reuse, Implementation, Sacramento, El Dorado, Placer and Yolo Counties, CA, Due: December 19, 1994, Contact: Jimmy B. Spain (703) 693-7556.

EIS No. 940454, DRAFT EIS, FHW, MI, M-84, Reconstruction Transportation Project, Titabawassee Road and Euclid Avenue, Funding, COE Section 10 and 404 Permits, Bay City, Bay and Saginaw Counties, MI, Due: January 3, 1995, Contact: Norman Stoner (517) 377-1880.

EIS No. 940455, Draft EIS, BOP, MA, Fort Devens, Massachusetts Federal Medical Center Complex (FMCC) and Federal Prison Camp, Construction

and Operation, Worcester and Middlesex Counties, MA, Due: January 3, 1995, Contact: Patricia K. Sledge (202) 514-8607.

**EIS No. 940456**, Final EIS, FHW, CA, CA-125/54 Freeway Transportation Project, Construction, west of Worthington Street, County of San Diego to CA-94 in the City of Lemon Grove, Funding and COE Section 404 Permit, Regional Transportation Plan San Diego County, CA, Due: December 19, 1994, Contact: Dennis Scovill (916) 551-1307.

**EIS No. 940457**, Draft EIS, FRC, ME, Lower Penobscot River Basin Hydroelectric Project, Application for Licensing for three hydroelectric projects: Basin Mills (FERC. NO. 10981), Stillwater (FERC. No. 2712) and Milford (FERC. No. 2534), Penobscot County, ME, Due: January 18, 1995, Contact: Sabina Lee (202) 219-1648.

**EIS No. 940458**, Final EIS, ICC, ME, Skinner and Vanceboro Rail Line (Docket No. AB-213 Sub No. 4) Abandonment or Discontinuation Project, Implementation, Franklin, Somerset, Piscataquis, Penobscot, Aroostook and Washington Counties, ME, Due: December 19, 1994, Contact: Elaine K. Kaiser (202) 927-6213.

Dated: November 15, 1994.

**Richard E. Sanderson,**

*Director, Office of Federal Activities*

[FR Doc. 94-28559 Filed 11-17-94; 8:45 am]

BILLING CODE 6560-50-U

[ER-FRL-4716-8]

### Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Weekly receipt of Environmental Impact Statements Filed October 24, 1994 Through October 28, 1994 Pursuant to 40 CFR 1506.9.

\*\*\*\*\* NOTE: DUE TO CIRCUMSTANCES BEYOND OUR CONTROL \*\*\*\*\* THIS NOTICE OF ENVIRONMENTAL IMPACT STATEMENTS, NOTICE OF AVAILABILITY WAS NOT PUBLISHED IN THE NOVEMBER 4, 1994 FEDERAL REGISTER. ALL COMMENT PERIODS ARE STILL CALCULATED FROM NOVEMBER 4, 1994.

**EIS No. 940440**, Final EIS, TVA, KY, TN, Land Between The Lakes (LBL) Natural Resource Management Plan, Implementation, KY and TN, Due: December 05, 1994, Contact: Harold M. Draper (615) 632-6889.

**EIS No. 940441**, Draft EIS, BLM, NM, Rosewell Resource Area Management Plan and Carlsbad Resource Area Management Plan Amendment Implementation, Quay, Curry, DeBaca, Roosevelt, Lincoln, Guadalupe, Chaves, Eddy, and Lea Counties, NM, Due: February 01, 1995, Contact: David Stout (505) 627-0272.

**EIS No. 940442**, Final EIS, AFS, WA, Butch Creek Timber Harvesting and Sale and Road Construction, Implementation, Idaho Panhandle National Forests, Priest Lake Ranger District, Pend Oreille County, WA, Due: December 08, 1994, Contact: David Cobb (208) 443-2512.

**EIS No. 940443**, Final EIS, FHW, MN, Tier 1 FEIS—Minnesota Trunk Highway-371 (MN-TH-371) Relocation across the Mississippi River, MN-TH-371 in Barrows to MN-TH-210 in Baxter, Funding and COE Section 404 Permit, Crow Wing County, MN, Due: December 05, 1994, Contact: Nan Friesen (612) 290-3241.

**EIS No. 940444**, Final EIS, FHW, IL, IL-13 (FAP-331) Transportation Improvements from west of the Illinois Central Railroad to US 45 east of Harrisburg, Funding, COE Section 404 and EPA NPDES Permits, Williamson and Saline Counties, IL, Due: December 05, 1994, Contact: Mr. Lyle P. Renz (217) 492-4600.

**EIS No. 940445**, Draft EIS, AFS, MT, Red Lodge Mountain Ski Area Master Development Plan, Special-Use-Permit Approval or Denial, Custer National Forest, Beartooth Ranger District, Carbon County, MT, Due: December 19, 1994, Contact: Tom Highberger (406) 446-2103.

**EIS No. 940446**, Final EIS, FHW, OK, Poteau Bypass Corridor Construction, US 59/US 271 junction 4.5 Miles to the US 59/OK-112 junction, Funding and COE Section 404 Permit, City of Poteau, LeFlore County, OK, Due: December 05, 1994, Contact: Bruce Lind (405) 231-4725.

**EIS No. 940447**, Final EIS, FHW, OH, OH-129/Princeton Road Transportation Improvements, from OH-129 to OH-4 in the City of Hamilton and I-75, Funding, NPDES Permit and COE Section 404 Permit, Butler County, OH, Due: December 05, 1994, Contact: Fred Hempel (614) 469-6896.

### Amended Notices

**EIS No. 940273**, Draft EIS, FEM, CA, Oakland City Administration Building Project, Construction, Funding and Permit Approval, for Replacement of City Hall in the City Hall Plaza, Oakland, CA, Due: August 29, 1994,

Contact: Sandro Amaglio (415) 923-7284.

Published FR 07-15-94—Officially Canceled by Preparing Agency.

**EIS No. 940392**, Draft EIS, FHW, CA, CA-180 Transportation Project, Construction, between Temperance Avenue and Cove Road, Funding and COE Section 404 Permit, Fresno County, CA, Due: November 07, 1994, Contact: Dennis A. Scovill (916) 551-1307.

Published FR 09-23-94 Correction of the Document Status from Final EIS to Draft EIS.

Dated: October 31, 1994.

**Richard E. Sanderson,**

*Director, Office of Federal Activities.*

[FR Doc. 94-28561 Filed 11-17-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5109-3]

### Public Meetings on Draft Reassessment of Dioxin and Related Compounds

**AGENCY:** Environmental Protection Agency

**ACTION:** Notice of Public Meetings on the EPA's Draft Reassessment of Dioxin and Related Compounds.

**SUMMARY:** The EPA has scheduled five public meetings to take oral and written comments on two recently released Draft Dioxin Reassessment Documents. The titles and EPA publication numbers of the documents are as follows:

1. Health Assessment Document for 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) and Related Compounds (EPA/600/BP-92/001a-c), and
2. Estimation of Exposure to Dioxin-Like Compounds (EPA/600/6-88/005Ca-c).

These meetings are being conducted as part of the Agency's commitment to conduct the reassessment of dioxin in an open and participatory manner, and to encourage public participation in the document development process. The public is invited to attend these meetings to present and to listen to comments on the technical merit of the draft reassessment documents. The comments presented at these meetings will be heard by a panel of senior scientists from within EPA and elsewhere who were involved in drafting both the health and exposure documents.

**DATES AND ADDRESSES:** The dates and locations of these meetings are as follows:

- December 8 and 9, 1994 in Herndon, Virginia, near Washington,

DC. Times: 9 am to 5 pm, both days. The site for both days is the Ramada Renaissance Hotel near Dulles Airport, 13869 Park Center Road, Herndon, Virginia.

- December 12 and 13, 1994 at two sites in the New York City—Newark, New Jersey area. Times for both days: 9 am to 5 pm, and 7 pm to 9 pm. On December 12, the site is the Taft Theater at the Fashion Institute of Technology, located at 227 West 27th Street, New York City.

- On December 13, the site is the Ball Room at the New Jersey Institute of Technology, University Heights, Newark, NJ.

- December 13, 1994 in Arlington, Texas.

Day and evening sessions will be held in separate locations in Arlington. The day session will be from 9 am to 5 pm in the University Center Rosebud Theater, University of Texas at Arlington, 301 West 2nd Street, Arlington, Texas.

The evening session will be from 7 pm to 9 pm in the South West Environmental Education Training (SWEET) Center, University of Texas at Arlington, 406 Summit Drive, Arlington, Texas. If additional time is needed, this public meeting may be extended for an additional day.

- December 14, 1994 in Chicago, Illinois. Times: 9 am to 5 pm, and 7 pm to 9 pm, at the EPA Regional Office, 77 West Jackson Street, 12th floor, Lake Michigan Room. If additional time is needed, this public meeting may be extended for an additional day.

- December 16 and 17, 1994 at two sites in San Francisco, California. On December 16, the times will be 9 am to 5 pm at the EPA Regional Office Large Conference Center, 75 Hawthorne Street, San Francisco.

- On December 17, the times will be from 9 am to 1 pm and the site will be the ANA Hotel, 50 Third Street, San Francisco.

**REGISTRATION PROCEDURE:** Any individual interested in doing so may present comments in the meeting of his or her choice. To allow for an orderly process and to facilitate scheduling, all individuals interested in speaking are requested to pre-register. To pre-register for any of the public meetings, telephone 202-260-5959 and follow the recorded voice mail instructions. Pre-registration will close on December 2, 1994. To the extent that time will allow, persons wishing to speak who are not preregistered may sign up at any meeting on a first-come first-served basis, and will be scheduled to speak after all of the pre-registered presenters.

**FOR FURTHER INFORMATION CONTACT:** David Klauder, ORD/OSPRE (8105), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Telephone 202-260-0536.

#### SUPPLEMENTARY INFORMATION:

##### Meeting Format

Each presenter will be allocated five (5) minutes to present oral comments. Presenters may be asked to respond to clarifying questions from the panelists. Presenters are encouraged to submit their full comments in writing and summarize their central points in their oral statement. Presenters may revise or expand their remarks and resubmit them at any time up to the close of the public comment period on January 13, 1995. A summary report of each meeting will be prepared and submitted to the record along with all written comments.

##### Alternative Means of Providing Comments

Members of the public who cannot attend these meetings may still submit written comments to the public record. Submissions should include three copies of each comment, and if commenting on both documents—the health assessment document and the exposure assessment—submit separate comments rather than combined submissions.

For the health assessment document, send comments to: Dioxin Health Assessment Comments, Technical Information Staff (8601), Office of Health and Environmental Assessment, US Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460. For the dioxin exposure assessment document, send comments to: Dioxin Exposure Assessment Comments, Technical Information Staff (8601), Office of Health and Environmental Assessment, US Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460.

##### Background

EPA has recently released an external review draft of its dioxin reassessment. This release marks a mid-point in EPA's effort to reevaluate the scientific understanding of dioxin. EPA and outside scientists have worked for over three years to develop the current draft of the reassessment. EPA will be taking public comments on the draft document until January 13, 1995. This public comment period will then be followed by a formal peer review by EPA's Science Advisory Board.

In April 1991, EPA announced that it would conduct a scientific reassessment of the health risks of exposure to dioxin and dioxin-like compounds. EPA has

undertaken this task in light of significant advances in our scientific understanding of mechanisms of dioxin toxicity, significant new studies of dioxin's carcinogenic potential in humans and increased evidence of other adverse health effects. The reassessment is part of the Agency's goals to improve its research and science base and to incorporate this knowledge into EPA decisions.

EPA has worked to make each phase of the dioxin reassessment an open and participatory process. These efforts have included the involvement of outside scientists as principal authors of several chapters, frequent public meetings to report our progress and take public comment, and publication of early drafts for public comment and peer review.

On September 13, 1994, the EPA released the public review draft of the full reassessment. The reassessment is a scientific document and does not address policy or regulatory issues. The reassessment consists of two documents, each over one thousand pages, and each published in three volumes. One of these documents addresses the human health effects of dioxin; the second focuses on sources and levels of exposure. Volume three of the health effects document is the Risk Characterization chapter. This chapter integrates the findings of both the effects and exposure documents, and describes the potential risks posed by dioxin. Copies of the documents are available from the ORD Publications Center, CERL-FRN, US Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone 513-569-7562, fax 513-569-7566. Please cite the full names of the documents and the EPA document numbers given above.

##### Future Actions

Beginning with the September 13, 1994, release date, EPA began accepting public comments on the draft document. The comment period will close on January 13, 1995. The public meetings announced in this notice are a part of this comment period.

The draft documents also will be reviewed by EPA's Science Advisory Board. This meeting will be held early in calendar year 1995, after the public comment period has ended. Information about the Science Advisory Board meeting will be published in a future Federal Register notice.

Following Science Advisory Board review, the documents will be revised to incorporate comments and revisions obtained during the review process, and final documents will be issued. The

time frame for completion and release of the final reassessment will depend to a great extent on the volume and complexity of comments provided to EPA, with the earliest likely time frame being the fall of 1995.

Dated: November 10, 1994.

**Joseph K. Alexander,**

*Acting Assistant Administrator for Research and Development.*

[FR Doc. 94-28551 Filed 11-17-94; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5109-1]

**Science Advisory Board;  
Environmental Economics Advisory  
Committee; Open Meeting**

Under Public Law 92-463, notice is hereby given that the Environmental Economics Advisory Committee (EEAC) of the Science Advisory Board will meet on December 13, 1994 at the Holiday Inn Georgetown, 2101 Wisconsin Avenue NW, Washington DC 20007. The hotel telephone number is (202) 338-4600.

The meeting, which is open to the public, will start at 9:00 AM, and adjourn no later than 5:00 PM. Its main purpose is to continue the Committee's ongoing discussion of resources for economic analysis at the Environmental Protection Agency; to receive briefings from Agency staff on upcoming issues (primarily work on the potential economic impacts of global climate change and on revising methodologies for developing economic aspects of regulatory impact analyses; and to plan the Committee's future meetings.

An agenda for the meeting is available from the Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460 (202-260-6552). Members of the public desiring additional information about the conduct of the meeting should contact Mr. Samuel Rondberg, Designated Federal Official, Environmental Economics Advisory Committee, by telephone at (202) 260-2559, via Internet to [rondberg.samuel@epamail.epa.gov](mailto:rondberg.samuel@epamail.epa.gov), by facsimile to (202) 260-7118, or by mail to the address noted above. Anyone wishing to make a presentation at the meeting should forward a written statement (35 copies) to Mr. Rondberg by December 5, 1994. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: November 14, 1994.

**Randall Bond,**

*Acting Staff Director, Science Advisory Board.*

[FR Doc. 94-28550 Filed 11-17-94; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY**

[FEMA-1041-DR]

**Texas; Amendment to Notice of a  
Major Disaster Declaration**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Texas, (FEMA-1041-DR), dated October 18, 1994, and related determinations.

**EFFECTIVE DATE:** November 8, 1994.

**FOR FURTHER INFORMATION CONTACT:** Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Texas dated October 18, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 18, 1994:

The counties of Austin, DeWitt, Hardin, Lee, Nacogdoches, and Shelby for Public Assistance (already designated for Individual Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

**James L. Witt,**

*Director.*

[FR Doc. 94-28515 Filed 11-17-94; 8:45 am]

BILLING CODE 6718-02-M

**FEDERAL RESERVE SYSTEM**

**National Bank of Canada; Notice of  
Application to Engage de Novo in  
Permissible Nonbanking Activities**

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank

holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 1994.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. *National Bank of Canada*, Montreal, Quebec, Canada; to engage *de novo* through its subsidiary Natbank, F.S.B., Pompano Beach, Florida, in operating a federal savings bank, to be known as Natbank, F.S.B., pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 10, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-28386 Filed 11-17-94; 8:45 am]

BILLING CODE 6210-01-M

**FEDERAL TRADE COMMISSION**

**Labeling Requirements for Alternative  
Fuels and Alternative Fueled Vehicles**

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of Application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for information collection requirements contained in the Commission's proposed rule that would establish uniform labeling requirements

for alternative fuels and alternative fueled vehicles.

**SUMMARY:** The FTC is seeking OMB clearance for information collection requirements contained in the Commission's proposed rule that would establish uniform labeling requirements for alternative fuels and alternative fueled vehicles.

Section 406(a) of the Energy Policy Act of 1992 directs the Commission to establish uniform labeling requirements, to the greatest extent possible, for alternative fuels and alternative fueled vehicles. The Commission has proposed the disclosure of certain information on labels posted on fuel dispensers for non-liquid alternative fuels and on labels on alternative fueled vehicles ("AFVs"). The purpose of these labeling requirements is to enable consumers to make reasonable choices and comparisons among competing products. The Commission is also proposing substantiation, certification, and recordkeeping requirements for importers, producers, refiners and distributors of non-liquid alternative fuels (other than electricity), manufacturers and distributors of electric vehicle fuel dispenser systems, and retail sellers of non-liquid alternative fuels (including electricity). These industry members would be required to maintain, for a period of one year, records that would substantiate the accuracy of fuel ratings for non-liquid alternative fuels.

In addition, the Commission is proposing separate recordkeeping requirements for AFV manufacturers. These industry members would be required to maintain, for a period of three years, records that would substantiate estimated cruising ranges and emission certification standards for alternative fueled vehicles.

These records would be available for inspection by Commission staff or by persons authorized by the Commission to ensure the accuracy of the information contained on the labels. Without such recordkeeping requirements, the Commission's labeling rule could be rendered ineffective, and the intent of Congress could be frustrated.

#### (a) Non-Liquid Alternative Fuels

Commission staff estimates that approximately 1,300 industry members would be covered by the recordkeeping

requirements that apply to the proposed rule's non-liquid alternative fuel labeling disclosures. Of these, staff estimates that approximately 1,000 industry members import, produce, refine, distribute or retail compressed natural gas to the public for use in alternative fueled vehicles. The Commission estimates that approximately 50 industry members manufacture or distribute electric vehicle fuel dispensing systems and that no more than 250 companies retail electricity to the public through electric vehicle fuel dispensing systems. Staff estimates that approximately six minutes per year per industry member will be required to comply with the proposed recordkeeping requirements, for a total yearly burden of 130 hours (six minutes per year times 1,300 industry members). This burden estimate is small because records that are likely to be retained by industry members during the normal course of business are excluded from the "burden" for OMB purposes. See 5 CFR 1320.7(b)(1).

#### (b) Alternative Fueled Vehicles

Commission staff estimates that approximately 58 industry members would be covered by the proposed rule's cruising range and emission standard three year recordkeeping requirement. Staff bases this number, in part, on recent Environmental Protection Agency estimates for clean-fuel vehicle programs. Under the proposed Commission rule, AFV manufacturers would be required to determine cruising ranges and emission standards for different models of alternative fueled vehicles. Staff estimates that it would take each of the 58 industry members thirty minutes per year to comply with this requirement, for a total yearly burden of 29 hours (thirty minutes per year times 58 industry members). This estimate is small because, similar to the records that would be retained for non-liquid alternative fuels, the records at issue here are likely to be developed and retained by the industry in the ordinary course of business.

#### (c) Total Burden

Based on these figures, Commission staff estimates the total burden associated with complying with the proposed rule's recordkeeping requirements to be 159 hours per year

for all affected industry members (130 hours plus 29 hours).

**DATES:** Comments on this application must be submitted on or before December 19, 1994.

**ADDRESSES:** Send comments both to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503, ATN: Desk Officer for the Federal Trade Commission and to the Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580. Copies of the submission to OMB, including the application, may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Kent C. Howerton, Attorney, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580, (202) 326-3013.

By Direction of the Commission.

Donald S. Clark,  
Secretary.

[FR Doc. 94-28277 Filed 11-17-94; 8:45 am]  
BILLING CODE 6750-01-M

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the *Federal Register*.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

## TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 103194 AND 111094

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Pacific Telesis Group, ESS Ventures, L.L.C., ESS Ventures, L.L.C.	94-2292	10/31/94
The Time Mirror Company, ESS Ventures, L.L.C., ESS Ventures, L.L.C.	95-0010	10/31/94
Koch Industries, Inc., Burlington Resources Inc., Meridian Oil Production, Inc.	95-0075	10/31/94
Rene Anselmo, PanAmSat Corporation, PanAmSat Corporation	95-0132	10/31/94
F. Holmes Lamoreux, Trans World Airlines, Inc., Midcoast Aviation, Inc.	94-2294	11/02/94
Amadeus Global Travel Distribution, S.A., Continental Airlines, Inc., NMC	95-0107	11/02/94
Amadeus Data Processing GmbH and Co. Beteligungs Komm., Continental Airlines, Inc., System One Information Management, Inc.	95-0108	11/02/94
Tenneco Inc., Arnold R. Klann, MLP Holdings, Inc.	95-0116	11/02/94
Tenneco Inc., Leslie C. Confair, MLP Holdings, Inc.	95-0117	11/02/94
General Motors Corporation, Continental Airlines, Inc., NMC	95-0122	11/02/94
General Motors Corp., Amadeus Global Travel Distribution, S.A., NMC	95-0123	11/02/94
Chevron Corporation, Riata Energy Inc., Riata Energy Inc.	95-0168	11/02/94
Schroder Real Estate Value-Enhancement Fund B, L.P., Sears, Roebuck and Co., Homart Development Co.	95-0170	11/02/94
General Electric Company, ATCO Ltd., ATCO Structures, Inc.	95-0171	11/02/94
Booker plc, Marine Harvest International, Inc., Marine Harvest International, Inc.	95-0174	11/02/94
Booker plc, Marine Harvest International, Inc., Marine Harvest International, Inc.	95-0177	11/02/94
Health Systems International, Inc., M.D. Enterprises of Connecticut, Inc., M.D. Enterprises of Connecticut, Inc.	95-0055	11/03/94
Ford Motor Company, General Electric Company, General Electric Capital Corp.	95-0067	11/03/94
Kinross Gold Corporation, RTZ Corporation PLC (The) (a British company), Kennecott Ridgeway Mining Company Holdings, Inc.	95-0098	11/03/94
American International Group, Inc., 20th Century Industries, 20th Century Industries	95-0103	11/03/94
Alleghany Corporation, Santa Fe Pacific Corporation, Santa Fe Pacific Corporation	95-0110	11/03/94
Wolters Kluwer NV, Sumner M. Redstone, Prentice Hall, Inc.	95-0135	11/03/94
Savoy Pictures Entertainment, Inc., Burnham Broadcasting Company, L.P., Burnham Broadcasting Company, L.P.	95-0138	11/03/94
Snap-on Incorporated, Sioux Tools, Inc., Sioux Tools, Inc.	95-0099	11/04/94
The Fuji Bank, Limited, Kennerth J. and Jill Edelson, General Sportcraft Co., Ltd.	95-0160	11/04/94
Consolidated Electrical Distributors, Inc., Sun Distributors L.P., SDI Operating Partners, L.P.	95-0163	11/04/94
The Morgan Stanley Real Estate Fund, L.P., Chemical Banking Corporation, Chemical Banking Corporation	95-0190	11/04/94
Hoechst Aktiengesellschaft, Clear Lake Menthol Company, L.L.C., Clear Lake Menthol Company, L.L.C.	95-0219	11/04/94
Aon Corporation, Jenner Fenton Slade Group Limited, Jenner Fenton Slade Group Limited	95-0114	11/08/94
Stewart & Stevenson Services, Inc., Air & Water Technologies Corporation, Power Application & Mfg. Co.	95-0149	11/08/94
El Camino Resources International, Inc., Bell Atlantic Corporation, Pacific Atlantic Systems Leasing, Inc.	95-0173	11/08/94
El Camino Resources International, Inc., PacificCorp, Pacific Atlantic Systems Leasing, Inc.	95-0175	11/08/94
Ideas, Inc., GTE Corporation, GTEV Vantage Incorporated	95-0176	11/08/94
Manville Corporation, Phillip Morris Companies Inc., Miller Brewing Company	95-0193	11/08/94
English China Clays plc, J. Carroll Rushing, EZE Products, Inc.	95-0194	11/08/94
Philips Electronics N.V., United International Holdings, Inc., United International Holdings, Inc.	95-0207	11/08/94
BC Midwest L.P., Boston Chicken, Inc., Boston Chicken, Inc.	95-0210	11/08/94
Leslie C. Confair, Tenneco, Inc., Tenneco Inc.	95-0220	11/08/94
Arnold R. Klann, Tenneco, Inc., Tenneco, Inc.	95-0221	11/08/94
J. Sainsbury plc, Israel Cohen, Giant Food Inc.	95-0069	11/09/94
Bankers Trust Corporation, Westinghouse Electric Corporation, Westinghouse Electric Corporation	95-0131	11/09/94
KONE Corporation, Montgomery Elevator Company, Montgomery Elevator Company	95-0187	11/09/94
Valero Energy Corporation, Clear Lake Menthol Company, L.L.C., Clear Lake Menthol Company, L.L.C.	95-0218	11/09/94
Southdown, Inc., Eastern Cement Corporation, Eastern Cement Corporation	95-0230	11/09/94
The Price Family Charitable Trust, Price/Costco, Inc., Price Enterprises, Inc.	95-0236	11/09/94
Robert E. Price, Price/Costco, Inc., Price Enterprises, Inc.	95-0237	11/09/94
NationsBank Corporation, Cypress Financial Corporation, Cypress Financial Corporation	95-0240	11/09/94
Charter Medical Corporation, National Medical Enterprises, Inc., NME Psychiatric Properties, Inc.	95-1576	11/10/94
Community Health Systems, Inc., Elliott White Springs Memorial Hospital, Inc., Lancaster Hospital Corporation	95-0156	11/10/94
Trinity Industries, Inc., Lafarge Coppee S.A. (a French company), Lafarge Corporation	95-0179	11/10/94
Berwind Group Partners, Supra Group, Inc. (The), Supra Group, Inc. (The)	95-0222	11/10/94

For Further Information Contact:  
Sandra M. Peay or Renee A. Horton,  
Contact Representatives, Federal Trade  
Commission, Premerger Notification  
Office, Bureau of Competition, Room  
303, Washington, D.C. 20580, (202) 326-  
3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94-28500 Filed 11-17-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 941 0054]

**Oerlikon-Bührle Holding AG; Proposed  
Consent Agreement With Analysis to  
Aid Public Comment**

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

**SUMMARY:** In settlement of alleged  
violations of federal law prohibiting  
unfair acts and practices and unfair  
methods of competition, this consent

agreement, accepted subject to final  
Commission approval, would permit,  
among other things, a Switzerland-based  
corporation to acquire Leybold AG, a  
German firm, but would require the  
respondent to divest both the Leybold  
compact disc metallizer business and  
the Balzers-Pfeiffer turbomolecular  
pump business, within 12 months after  
the Commission order becomes final, to  
Commission approved entities. If the  
divestitures are not completed within 12

months, the Commission would be permitted to appoint trustees to complete them. In addition, the respondent would be required, for ten years, to obtain Commission approval before acquiring any interest in any entity engaged in either of the two markets at issue.

**DATES:** Comments must be received on or before [Insert date 60 days after Federal Register publication date].

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Ann Malester or Michael Moiseyev, FTC/S-2224, Washington, D.C. 20580. (202) 326-2682.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

#### Agreement Containing Consent Order

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition by Oerlikon-Buhrle Holding AG ("Oerlikon-Buhrle"), a Swiss corporation, of Leybold AG, ("Leybold"), a wholly-owned subsidiary of Degussa Aktiengesellschaft ("Degussa"), a German corporation, and it now appearing that Oerlikon-Buhrle, hereinafter sometimes referred to as "Proposed Respondent," is willing to enter into an agreement containing an order to divest certain assets and cease and desist from making certain acquisitions, and providing for certain other relief:

*It is hereby agreed by and between Proposed Respondent Oerlikon-Buhrle, by its duly authorized officers and attorneys, and counsel for the Commission that:*

1. Proposed Respondent Oerlikon-Buhrle is a corporation organized, existing, and doing business under and by virtue of the laws of Switzerland with its principal executive offices

located at Hofwiesenstrasse 135, CH-8021 Zurich, Switzerland.

2. Schweizerische Kreditanstalt ("SKA") is a banking corporation organized, existing, and doing business under and by virtue of the laws of Switzerland with its principal executive offices located at Paradeplatz, CH-8001 Zurich, Switzerland. Pursuant to the Trust Agreement dated October 6, 1994, SKA will hold all of the outstanding shares of Balzers-Pfeiffer GmbH in trust and for the account and risk of Oerlikon-Buhrle as of the time Leybold is required by Oerlikon-Buhrle, and will be an agent of Oerlikon-Buhrle.

3. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed Respondent waives:

- (a) any further procedural steps;
- (b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and
- (d) any claims under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information is respect thereto publicly release. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without, further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here

attached and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Proposed Respondent's wholly-owned subsidiary, Oerlikon-Buhrle USA, Inc., at its principal executive offices at One Penn Plaza, Suite 4828, New York, NY 10119, shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Proposed Respondent has read the proposed complaint and order contemplated hereby. Proposed Respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed Respondent further understands it may be liable for civil penalties in the amount provided by law for each violation of the order by Respondent or any agent of Respondent, including without limitation SKA, after it becomes final.

#### Order

I

It is ordered that, as used in this order, the following definitions shall apply:

A. "Oerlikon-Buhrle" means Oerlikon-Buhrle Holding AG, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Oerlikon-Buhrle; their directors, officers, employees, agents (including, but not limited to, SKA), and representatives; and their successors and assigns.

B. "Leybold" means Leybold AG, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Leybold; their directors, officers, employees, agents, and representatives; and their successors and assigns.

C. "SKA" means Schweizerische Kreditanstalt, a banking corporation organized, existing and doing business under, and by virtue of the laws of

Switzerland. Pursuant to the Trust Agreement dated October 6, 1994, SKA will hold all of the outstanding shares of Balzers-Pfeiffer GmbH in trust and for the account and risk of Oerlikon-Bührle as of the time Leybold is acquired by Oerlikon-Bührle, and will be an agent of Oerlikon-Bührle.

D. "Balzers-Pfeiffer" means Balzers-Pfeiffer GmbH, a German corporation, its predecessors, subsidiaries, divisions, and groups and affiliates controlled by Balzers-Pfeiffer; their directors, officers, employees, agents, and representatives; and their successors and assigns.

E. "Respondent" means Oerlikon-Bührle.

F. "Commission" means the Federal Trade Commission.

G. "Acquisition" means Oerlikon-Bührle's acquisition of voting securities of Leybold pursuant to the Purchase Agreement dated January 21, 1994.

H. "Assets and Businesses" means all assets, properties, businesses goodwill, tangible and intangible, including, without limitation, the following:

1. all machinery, fixtures, equipment, vehicles, transportation facilities, furniture, tools and other tangible personal property;
2. all customer lists, vendor lists, catalogs, sales promotion literature, advertising materials, research materials, technical information, management information systems, software, inventions, copyrights, trademarks, trade names, trade secrets, intellectual property, patents, technology, know-how, specifications, designs, drawings, processes and quality control data;
3. inventory and storage capacity;
4. all rights, title and interest in and to the contracts entered into in the ordinary course of business with customers (together with associated bid and performance bonds), suppliers, sale representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, consignors and consignees;
5. all rights under warranties and guarantees, express or implied;
6. all books, records, and files; and
7. all items of prepaid expense.

I. "Trust Agreement" means the trust agreement dated October 6, 1994, between Oerlikon-Bührle and SKA, attached hereto as Attachment 1, pursuant to which SKA will hold all of the outstanding shares of Balzers-Pfeiffer GmbH in trust and for the account and risk of Oerlikon-Bührle, as of the time Leybold is acquired by Oerlikon-Bührle, and will be an agent of Oerlikon-Bührle.

J. "Leybold Compact Disc Metallizer Business" means all of Leybold's rights, title and interest in and to:

1. compact disc metallizers, including, but not limited to, Singulus, and all patents, trademarks, intellectual property, production technology and know-how related to the manufacture, distribution and sale of compact disc metallizers; and
2. all of Leybold's Assets and Businesses as further delineated in Schedule A, attached hereto and made a part hereof.

K. "Leybold Thin Film Coating Systems Business" means all of Leybold's rights, title and interest, as of the date this agreement is accepted by the Commission, in all Assets and Businesses relating to the development, manufacture, distribution, marketing or sale of vacuum systems and equipment for the deposition of thin films, including without limitation, vacuum web coating systems, architectural glass coaters, compact disc metallizers, compact disc replication lines, compact disc mastering equipment, precision optics coating systems, ophthalmic lens coating systems, decorative hard coating systems, silicon crystal growing systems, and vacuum coating systems for research and development. Such Assets and Businesses shall include all rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits. The Leybold Thin Film Coating Systems Business excludes magnetic and magneto-optical disc coating systems, systems for the manufacture of thin film heads for magnetic drives, vacuum systems for the coating of plastic parts, and vacuum systems for the coating of automotive parts.

L. "Balzers-Pfeiffer Assets" means all of the Assets and Businesses of Balzers-Pfeiffer and all of the other Oerlikon-Bührle Assets and Businesses relating to the development, manufacture, distribution, marketing, or sale of turbomolecular pumps, as delineated in Schedule B, attached hereto and made a part hereof.

M. "Ophthalmic Coating Business" means all of Oerlikon-Bührle's rights, title and interest in all Assets and Businesses relating to the development, manufacture, distribution, marketing, or sale of equipment used in the application of coatings to ophthalmic lenses, including all interests in such Assets and Businesses as acquired from Leybold.

N. "Compact Disc Metallizers" means vacuum systems for the deposition of reflective coatings on audio compact discs and CD-ROMs.

O. "Turbomolecular Pumps" means vacuum pumps employing turbomolecular processes to generate high vacuum environments.

## II

It is further ordered that:

A. Oerlikon-Bührle shall divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Leybold Compact Disc Metallizer Business, and shall also divest such additional ancillary Assets and Businesses and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of the Leybold Compact Disc Metallizer Business; provided that Oerlikon-Bührle is not required to divest any of the assets identified in Part 2 of Schedule A unless such assets are required by the acquirer.

B. Oerlikon-Bührle shall divest the Leybold Compact Disc Metallizer Business only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture is to ensure the continuation of the Leybold Compact Disc Metallizer Business as an ongoing, viable operation, engaged in the same business in which the Leybold Compact Disc Metallizer Business is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

C. Upon reasonable notice from the acquirer to Oerlikon-Bührle, for a period of six months following the date of divestiture, Oerlikon-Bührle shall provide such personnel, information, technical assistance, advice and training to the acquirer as is necessary to transfer the Leybold Compact Disc Metallizer Business pursuant to Paragraph II.A. and establish such business as a viable, ongoing concern. Such assistance shall include reasonable consultation with knowledgeable employees of Oerlikon-Bührle to satisfy the acquirer's management that its personnel are appropriately trained in the manufacture of compact disc metallizers to the extent Oerlikon-Bührle has the ability to do so after the divestiture is complete. Oerlikon-Bührle shall not charge the acquirer a rate more than its own direct costs for providing such technical assistance.

D. Pending divestiture of the Leybold Compact Disc Metallizer Business, Oerlikon-Bührle shall take such actions as are necessary to maintain the viability, marketability, and competitiveness of the Leybold Compact Disc Metallizer Business and to prevent

the destruction, removal, wasting, deterioration or impairment of the Leybold Compact Disc Metallizer Business except for ordinary wear and tear.

E. At the time of the execution of a purchase agreement between Oerlikon-Buhrle and a proposed acquirer of the Leybold Compact Disc Metallizer Business, Oerlikon-Buhrle shall provide the acquirer with a complete list of all non-clerical, salaried employees of the Leybold Compact Disc Metallizer Business, who have been involved in the development, production, distribution, or sale of Leybold compact disc metallizers at any time during the period from September 1, 1992, until the date of the purchase agreement. Such list shall state each such individual's name, position, address, telephone number, and a description of the duties of and work performed by the individual in connection with any compact disc metallizer product developed, produced, or distributed by Leybold.

F. Oerlikon-Buhrle shall provide the proposed acquirer with an opportunity to inspect the personnel files and other documentation relating to the individuals identified in Paragraph II.E. of this order to the extent permissible under applicable laws. For a period of six (6) months following the divestiture, Oerlikon-Buhrle shall further provide the Commission-approved acquirer with an opportunity to interview such individuals and negotiate employment contracts with them.

G. Oerlikon-Buhrle shall provide the individuals identified in Paragraph II.E. of this order with ample financial incentives to continue in their employment positions during the period covered by the Leybold Hold Separate Agreement, hereto attached, and to accept employment with the Commission-approved acquirer at the time of the divestiture. Such incentives shall include:

1. continuation of all employee benefits offered by Leybold until the date of the divestiture; and
2. a bonus equal to 25 percent of an employee's annual salary (including any other bonuses) as of the date this order becomes final for any individual who agrees to employment with the Commission-approved acquirer, payable upon the beginning of their employment by the Commission-approved acquirer.

H. For a period of one (1) year commencing on the date of the individual's employment by the Commission-approved acquirer, Oerlikon-Buhrle shall not re-hire any of the individuals identified in Paragraph II.E. of this order who accept

employment with the Commission-approved acquirer.

### III

It is further ordered that:

A. Respondent Oerlikon-Buhrle shall divest, and shall direct SKA to take all steps necessary to divest, absolutely and in good faith, within twelve (12) months of the date this order becomes final, the Balzers-Pfeiffer Assets, and Oerlikon-Buhrle shall also divest such additional ancillary Assets and Businesses and effect such arrangements as are necessary to assure the marketability, viability, and competitiveness of Balzers-Pfeiffer; provided that Oerlikon-Buhrle is not required to divest any of the assets identified in Part 2 of Schedule B, unless such assets are required by the acquirer.

B. Oerlikon-Buhrle shall divest, and shall direct SKA to take all steps necessary to divest, the Balzers-Pfeiffer Assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of the Balzers-Pfeiffer Assets is to ensure the continuation of Balzers-Pfeiffer as an ongoing, viable operation, engaged in the same business in which it is engaged at the time of the proposed divestiture, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint. Provided, however, that nothing in this order shall prevent Oerlikon-Buhrle from transferring the stock and share capital of Balzers-Pfeiffer to SKA at the time Oerlikon-Buhrle acquires Leybold pursuant to the Trust Agreement. However, such transfer shall not fulfill Oerlikon-Buhrle's obligation under this order to divest Balzers-Pfeiffer Assets.

C. Pending divestiture of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall take such actions, and shall direct SKA to take such actions, as are necessary to maintain the viability and marketability of Balzers-Pfeiffer and to prevent the destruction, removal, wasting, deterioration or impairment of any of the Balzers-Pfeiffer Assets except for ordinary wear and tear.

D. Oerlikon-Buhrle shall take all steps necessary to ensure that SKA complies with the Trust Agreement, including, without limitation, pursuing any legal action it may have against SKA for monetary and equitable damages arising from any breach of the Trust Agreement by SKA. Oerlikon-Buhrle shall not agree to any alteration, reformation, amendment or other change to the Trust Agreement without the prior approval of the Commission. In addition to the

requirements of this Paragraph III, Oerlikon-Buhrle shall direct SKA to take all steps necessary to accomplish the requirements of this order pertaining to the Balzers-Pfeiffer Assets.

### IV

It is further ordered that:

A. If Oerlikon-Buhrle has not divested, absolutely and in good faith, and with the prior approval of the Commission, the Leybold Compact Disc Metallizer Business within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Leybold Thin Film Coating Systems Business.

B. If Oerlikon-Buhrle and SKA have not divested, absolutely and in good faith, and with the prior approval of the Commission, the Balzers-Pfeiffer Assets within twelve (12) months of the date this order becomes final, the Commission may appoint a trustee to divest the Balzers-Pfeiffer Assets.

C. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Oerlikon-Buhrle and in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph IV shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Oerlikon-Buhrle to comply with this order.

D. If a trustee is appointed by the Commission or a court pursuant to Paragraph IV.A. or Paragraph IV.B., Oerlikon-Buhrle shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Oerlikon-Buhrle and in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Oerlikon-Buhrle or in the case of the Balzers-Pfeiffer Assets, SKA, at the direction of Oerlikon-Buhrle, has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10)

days after notice by the staff of the Commission to Oerlikon-Buhrle of the identity of any proposed trustee, Oerlikon-Buhrle shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets.

3. Within ten (10) days after appointment of the trustee, Oerlikon-Buhrle shall execute a trust agreement, and in the case of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall direct SKA to execute a trust agreement, that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture(s) required by this order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph IV.D.3. to accomplish the divestiture(s), which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel, books, records and facilities related to the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets, or to any other relevant information, as the trustee may request. Oerlikon-Buhrle shall develop, and in the case of the Balzers-Pfeiffer Assets, Oerlikon-Buhrle shall direct SKA to develop such financial or other information as such trustee may request and shall cooperate with the trustee. Oerlikon-Buhrle shall take no action, and Oerlikon-Buhrle shall direct SKA to take no action, to interfere with or impede the trustee's accomplishment of the divestiture(s). Any delays in divestiture caused by Oerlikon-Buhrle or SKA shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Oerlikon-

Buhrle's absolute and unconditional obligation to divest at no minimum price. The divestiture(s) shall be made in the manner and to the acquirer(s) as set out in Paragraphs II and III of this order, as appropriate; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by Oerlikon-Buhrle from among those approved by the Commission. If requested by the trustee or acquirer, Oerlikon-Buhrle shall provide the acquirer with the assistance required by Paragraph II.C. of this order.

7. The trustee shall serve, without bond or other security, at the cost and expense of Oerlikon-Buhrle, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of Oerlikon-Buhrle, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture(s) and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Oerlikon-Buhrle, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Leybold Thin Film Coating Systems Business and/or the Balzers-Pfeiffer Assets.

8. Oerlikon-Buhrle shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph IV of this order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture(s) required by this order.

11. The trustee shall have no obligation or authority to operate or maintain the Leybold Thin Film Coating Systems Business or the Balzers-Pfeiffer Assets.

12. The trustee shall report in writing to Oerlikon-Buhrle and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture(s).

## V

It is further ordered that, until the earlier of ten (10) years from the date this order becomes final or until Oerlikon-Buhrle has sold all of the Assets and Businesses of either Balzers' ophthalmic lens coating business or Leybold's ophthalmic lens coating business, Oerlikon-Buhrle shall not transfer any interest in the stock, share capital, or assets of the Ophthalmic Coating Business to any third party, other than to a subsidiary of Oerlikon-Buhrle, without providing advance written notification to the Federal Trade Commission. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter "the Notification"). Oerlikon-Buhrle shall provide to the Federal Trade Commission, at least thirty days prior to transferring any interest in the stock, share capital, or assets of the Ophthalmic Coating Business, both the Notification and supplemental information either in Oerlikon-Buhrle's possession or reasonably available to Oerlikon-Buhrle. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of Oerlikon-Buhrle and of the firm who proposes to acquire the stock, share capital, or assets of the Ophthalmic Coating Business who negotiated the acquisition agreement; and any management or strategic plans discussing the proposed transaction. If, within the thirty-day period, representatives of the Federal Trade Commission make a written request for additional information, Oerlikon-Buhrle shall not consummate the transaction until twenty days after submitting such additional information. Early termination of the waiting periods in this Paragraph may be requested and, where appropriate, granted in the same

manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. Section 18a.

#### VI

It is further ordered that Oerlikon-Buhrle shall comply with all terms of the Balzers-Pfeiffer Agreement to Hold Separate and the Leybold Systems Business Agreement to Hold Separate, attached to this order and made a part hereof as Appendices I and II. The Balzers-Pfeiffer Agreement to Hold Separate the Balzers-Pfeiffer Assets shall continue in effect until Oerlikon-Buhrle and SKA have divested all of the Balzers-Pfeiffer Assets. The Leybold Systems Business Agreement to Hold Separate shall continue in effect until Oerlikon-Buhrle has divested all of the Leybold Compact Disc Metallizer Business or the Leybold Thin Film Coating Systems Business as required by this order.

#### VII

It is further ordered that, for a period of ten (10) years from the date this order becomes final, Oerlikon-Buhrle shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in, the manufacture of turbomolecular pumps;

B. acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of turbomolecular pumps;

C. acquire any of the stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in, the manufacture of compact disc metallizers; or

D. acquire any assets used for or previously used for (and still suitable for use for) the manufacture, distribution, or sale of compact disc metallizers.

Provided, however, that this Paragraph VII shall not apply to the acquisition of products or services acquired in the ordinary course of business, or of any non-exclusive license to any patent or other form of intellectual property (excluding assets of the Leybold Compact Disc Business and Balzers-Pfeiffer).

#### VIII

It is further ordered that:

A. Within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until Oerlikon-Buhrle has fully complied with Paragraphs II, III, IV, and VI of this order, Oerlikon-Buhrle shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II, III, IV, and VI of this order. Oerlikon-Buhrle shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II, III, IV, and VI of this order, including a description of all substantive contacts or negotiations for the divestiture(s) required by this order, including the identity of all parties contacted. Oerlikon-Buhrle shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

B. One (1) year from the date this order becomes final, annually for the next nine (9) years on the anniversary of the date this order becomes final, and at such other times as the Commission may require, Oerlikon-Buhrle shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs V and VII of this order.

#### IX

It is further ordered that, for the purpose of determining or securing compliance with this order, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondent, relating to any matters contained in this order; and

B. Upon five (5) days' notice to Respondent, and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent. Officers and employees of Respondent whose places of employment are outside the United States shall be made available on reasonable notice.

#### X

It is further ordered that

A. Oerlikon-Buhrle shall notify the Commission at least thirty (30) days

prior to any proposed change in the corporate Respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

#### Schedule A

Oerlikon-Buhrle shall divest all of the Assets and Businesses of the Leybold Compact Disc Metallizer Business pursuant to the terms of this order. The assets identified in Paragraph I.J. of this order shall include all assets, properties, business and goodwill, tangible and intangible, of Leybold in or relating to the development, manufacture, sale, distribution and marketing of compact disc metallizers, compact disc lines, and compact disc mastering systems, including without limitation, the following:

##### Part 1

1. all Leybold compact disc metallizers including, but not limited to, equipment and documentation;

2. all Leybold compact disc metallizer inventory (including work in progress);

3. all lists or other information necessary to source materials, parts, components and other inputs involved in the production of Leybold compact disc metallizers;

4. all rights, title and interest in and results of all research and development efforts by Leybold relating to improvements, developments, and variants of Leybold compact disc metallizer products;

##### Part 2

5. all Assets and Businesses of Leybold relating solely to the development, manufacture, sale, distribution and/or marketing of compact disc lines and/or compact disc mastering systems, including equipment, documentation, inventory, work in process, information necessary to source materials, parts, components, and other inputs, all rights, title and interest and results of all research and development efforts by Leybold relating solely to improvements, developments, and variants of Leybold compact disc line and or mastering system products, and employment contracts to the extent permissible under applicable law.

#### Schedule B

Oerlikon-Buhrle shall divest all of the Assets and Businesses of the Balzers-Pfeiffer Assets pursuant to the terms of this order. The assets identified in Paragraph I.L. of this order shall include

all assets, properties, business and goodwill, tangible and intangible, of Oerlikon-Bührle as of the date this order is accepted by the Commission, in or relating to the development, manufacture, marketing, sale, and distribution of turbomolecular pumps, including without limitation, the following:

#### Part 1

1. all of the stock and share capital, or participation held by Oerlikon-Bührle of Balzers-Pfeiffer, including, without limitation, all stock, share capital, or participation held in trust by SKA for the account and risk of Oerlikon-Bührle as of the date Leybold is acquired by Oerlikon-Bührle;

2. all patents, intellectual property, trademarks, production technology, and know-how related to the development, manufacture, marketing, sale, or distribution of turbomolecular pumps;

3. all rights, title and interest in and results of all research and development efforts relating to improvements, developments, and variants of turbomolecular pump products;

4. all rights, title and interest in and to owned or leased real property, together with appurtenances, licenses and permits used in the manufacture of turbomolecular pumps;

#### Part 2

5. all Assets and Businesses of Oerlikon-Bührle (excluding Balzers-Pfeiffer) in or relating to the sale, distribution or marketing of turbomolecular pumps.

#### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted subject to final approval an agreement containing a proposed consent order from Oerlikon-Bührle Holding AG ("Oerlikon-Bührle") to resolve competitive concerns with the proposed acquisition of Leybold AG, a wholly-owned subsidiary of Degussa Aktiengesellschaft. Under the proposed order, Oerlikon-Bührle would: (1) divest its Turbomolecular Pump Business; (2) divest the Leybold Compact Disc Metallizer Business; and (3) notify the Commission before selling any assets of or interest in its Ophthalmic Coating Business.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and the comments received

and will decide whether to withdraw its acceptance of the agreement or to make final the agreement's proposed order.

The draft complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, and Section 5 of the FTC Act, 15 U.S.C. § 45, as amended, in the markets for turbomolecular pumps and compact disc metallizers. The proposed consent order would remedy the alleged violation by requiring divestitures to restore competition.

The proposed order would require Oerlikon-Bührle to divest the Leybold Compact Disc Metallizer Business and the Oerlikon-Bührle Turbomolecular Pump Business within twelve (12) months after the proposed order becomes final. The proposed order would require Oerlikon-Bührle to take all steps necessary to ensure that Schweizerische Kreditanstalt ("SKA"), trustee for the Turbomolecular Pump Business, cooperates to accomplish divestiture of the Turbomolecular Pump Business. Under the terms of the order, Oerlikon-Bührle would be responsible for order violations caused by SKA.

Oerlikon-Bührle also would be required to divest, at the option of the acquirer(s), Compact Disc Integrated Line assets, Compact Disc Mastering assets, and the sales and service organization associated with the Oerlikon-Bührle Turbomolecular Pump Business.

To help ensure the viability of the Leybold Compact Disc Metallizer Business, Oerlikon-Bührle would be required to provide technical assistance to the acquirer as necessary. In addition, Oerlikon-Bührle would be required to give the acquirer an opportunity to interview and offer employment to personnel involved in the Leybold Compact Disc Metallizer Business and to offer financial incentives for employees to remain with Leybold pending divestiture and to accept employment with the acquirer after divestiture. Oerlikon-Bührle could not rehire any of these employees until one year after they began employment with the acquirer.

If Oerlikon-Bührle failed to divest the Leybold Compact Disc Metallizer Business during the allotted time, a trustee could be appointed to divest the Leybold Thin Film Coating Systems Business. If Oerlikon-Bührle failed to divest the Turbomolecular Pump Business, a trustee could be appointed to divest the Turbomolecular Pump Business. If, at the end of twelve months, the trustees submitted a plan of divestiture or believed that divestiture could be achieved within a reasonable

time, the time period for divestiture could be extended.

A Hold Separate Agreement provides that until the divestiture of the Leybold Compact Disc Metallizer Business is completed, the Leybold Thin Film Coating Systems Business shall be held separate from and operated independently of Oerlikon-Bührle. A second Hold Separate Agreement provides that until the divestiture of the Oerlikon-Bührle Turbomolecular Pump Business is completed, this business shall be held separate from and operated independently of Oerlikon-Bührle.

Under the proposed order, Oerlikon-Bührle would be required to provide to the Commission reports of its compliance with the divestiture provisions of the order sixty (60) days after the order becomes final and every sixty (60) days thereafter, until the divestitures have been completed.

The proposed order would require Oerlikon-Bührle, for ten (10) years, to obtain the prior approval of the Commission before acquiring any interest in any other company engaged in the manufacture, distribution or sale of turbomolecular pumps or compact disc metallizers.

The proposed order also would require Oerlikon-Bührle to provide advance notice to the Commission before selling any interest in or assets of its Ophthalmic Coating Business.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,  
Secretary.

[FR Doc. 94-28499 Filed 11-17-94; 8:45 am]  
BILLING CODE 6750-01-M

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

##### Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-94-1917; FR-3778-N-11]

##### Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATES:** November 18, 1994.

**ADDRESSES:** For further information, contact William Molster, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-1226; TDD number for the hearing- and speech-impaired (202) 708-2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1-800-927-7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 14, 1994.

Jacque M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 94-28512 Filed 11-17-94; 8:45 am]

BILLING CODE 4210-29-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-922-05-1310-01]

#### Oil and Gas Leasing Final Environmental Impact Statement by the Grand Mesa

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Adoption by the Bureau of Land Management (BLM) of the Oil and Gas Leasing Final Environmental Impact Statement by the Grand Mesa, Uncompahgre and Gunnison National Forests in accordance with the National Environmental Policy Act (NEPA) and Title 40 CFR Part 1500.

**SUMMARY:** In accordance with Section 102 of the National Environmental Policy Act of 1969, a Final Environmental Impact Statement (FEIS) for Oil and Gas Leasing on Lands Administered by the Grand Mesa, Uncompahgre and Gunnison National Forests has been prepared by the U.S. Forest Service (FS) and BLM. The BLM participated in preparation of the FEIS as a cooperating agency in accordance with Title 40 CFR Part 1501.6 and national and local agreements.

The FEIS addresses oil and gas leasing on certain lands in the Grand Mesa, Uncompahgre and Gunnison National Forests that are legally open to leasing. It is tiered to and supplements the Grand Mesa, Uncompahgre and Gunnison National Forests Final Environmental Impact Statement for the Land and Resource Management Plan (Forest Plan FEIS). The Forest plan became effective in 1983. The Oil and Gas Leasing EIS provides more detailed information on the potential effects of oil and gas leasing needed to meet current laws, regulations and requirements not in place at the time the Forest Plan FEIS was completed.

The Mineral Leasing Act of 1920, as amended, provides the Secretary of the Interior the authority to issue oil and gas leases on lands where oil and gas rights are held by the Federal Government. This authority has been delegated to BLM. The issuance of oil and gas leases on National Forest System Lands by BLM requires the consent of the Secretary of Agriculture under the Federal Onshore Oil and Gas Leasing Reform Act of 1987. This authority to object or not object to leasing and to require specific conditions for leasing has been delegated to Forest Supervisors.

In accordance with Title 40, CFR, Part 1506.3(c), the BLM is adopting the FEIS for the purpose of issuing oil and gas leases and approving operations on lands within the administrative boundaries of the Grand Mesa, Uncompahgre and Gunnison National Forests. Comments and concerns of the Department of the Interior have been satisfied. The FEIS meets the requirements of the regulations for implementing the Federal Land Policy and Management Act of 1976 (Title 43 CFR, Part 1600).

Copies of the FEIS are available from the U.S. Forest Service, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416. Public reading copies will be available at the following BLM locations:

Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215  
Montrose District Office, 2465 S. Townsend Ave., Montrose, Colorado 81401  
Grand Junction District Office, 2815 H Road, Grand Junction, Colorado 81506

#### FOR FURTHER INFORMATION CONTACT:

Jim Rhett, Bureau of Land Management, Colorado State Office, (CO-922), 2850 Youngfield Street, Lakewood, Colorado 80215.

Dated: October 21, 1994.

Linda S. Colville,

Acting State Director.

[FR Doc. 94-28481 Filed 11-17-94; 8:45 am]

BILLING CODE 4310-JB-M

[NV-930-1430-01; N-57841]

#### Notice of Realty Action; Non-Competitive Sale of Public Lands

**AGENCY:** Bureau of Land Management.

**ACTION:** Non-Competitive Sale of Public Lands in Clark County, Nevada.

**SUMMARY:** The following described public land in Clark County, Nevada, has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of P.L. 94-579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719).

#### Mount Diablo Meridian, Nevada

T. 19 S., R. 62 E.,

Section 23; that portion south of I-15,

Section 26; NW¼S¼,

containing 490 acres, more or less.

This parcel of land, situated in Clark County, NV, is being offered as a non-competitive sale to the Las Vegas Motor Speedway, Inc. This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals, and will be subject to:  
1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County. Power Company by grant No. N-53399 under the Act of December 21, 1928.

3. Those rights granted to the Nevada Department of Transportation for highway purposes by grant No. Nev-057852 under the Act of August 27, 1958.

4. Those rights granted to the Core of Engineers for a railroad spur by grant No. Nev-013137A under the Act of January 13, 1916.

Upon publication of this notice in the *Federal Register*, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This

segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, 4765 W. Vegas Dr., Las Vegas, NV 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with Public Law 94-579, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: November 9, 1994.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 94-28488 Filed 11-17-94; 8:45 am]

BILLING CODE 4310-HC-P

#### Bureau of Land Management

[OR-930-05-6350-00; GP5-024]

#### Proposed Resource Management Plan/ Final Environmental Impact Statement (PRMP/FEIS); Availability

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of the Proposed Resource Management Plan/Final Environmental Impact Statement for the Eugene District, Oregon, on or about November 18, 1994.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(f) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610, a Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) for the Eugene District, Oregon, has been prepared and is available for review and comment. The PRMP/FEIS describes and analyzes future options for managing approximately 317,000 acres of mostly forested public land administered by the Bureau of Land Management in Lane, Linn, Benton, and Douglas Counties in western Oregon.

Decisions generated during this planning process will supersede land

use planning guidance presented in the 1983 Management Framework Plan (MFP) as well as land use guidance for the Eugene District Off-Highway Vehicle (OHV) Designation Plan, 1976 Upper Willamette and Siuslaw Environmental Analysis Records for Oil and Gas Leasing, and the 1978 Noti-Lorane and Mohawk-Dorena Environmental Assessments for Oil and Gas Leasing.

Copies of the PRMP/FEIS and a summary of it may be obtained from the Eugene District Office. Public reading copies will be available for review at the public libraries in Eugene, the Lane County Office Building, all government document depository libraries, and at the following BLM locations.

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC 20240. Public Room, Oregon State Office, 1515 5th, Portland, Oregon 97201. Eugene District Office, 2890 Chad Drive, Eugene, Oregon 97401. All other BLM offices in western Oregon.

A briefing and a open house with opportunity to discuss the PRMP/FEIS will be held on November 28, 1994, at the Eugene District Office, 2890 Chad Drive, Eugene, Oregon, from 1:00 p.m. until 3:00 p.m. and 7:00 p.m. until 9:00 p.m. Additional open houses will be scheduled as needed.

**DATES:** Written comments on the PRMP/FEIS must be submitted or postmarked no later than 30 days from when the Environmental Protection Agency publishes in the **Federal Register** its Notice of Availability of the Final Environmental Impact Statement concerning the proposed RMP. The Environmental Protection Agency is expected to publish this notice November 18, 1994 so the protest period would close on December 19, 1994.

**ADDRESSES:** Written comments should be addressed to Judy Ellen Nelson, District Manager, Eugene District, Bureau of Land Management, P.O. Box 10226, Eugene, Oregon 97740.

**FOR FURTHER INFORMATION CONTACT:** Don Wilbur, RMP Team Leader, Eugene District Office; Phone (505) 683-6994.

**SUPPLEMENTARY INFORMATION:** The PRMP/FEIS describes and analyses seven alternatives to resolve the following issues: (1) Timber production practices; (2) Old growth forests and habitat diversity; (3) Threatened and endangered and other Special Status and SEIS Special Attention species habitat; (4) Special areas; (5) Visual resources; (6) Stream/riparian/water quality; (7) Recreation resources; (8) Wild and scenic rivers; (9) Land tenure; and (10) Rural Interface Areas. The

issues are analyzed in seven distinct alternatives.

In the BLM's Proposed Resource Management Plan, water quality would be maintained or improved primarily by a combination of Best Management Practices and exclusion of selected areas from planned timber harvest. Particularly important exclusion areas would be the riparian zones of perennial streams and other streams that carry fish.

About 224,400 acres would be managed to maintain and strengthen a system of old growth ecosystem areas, which are expected to increase the amount of old growth stands in the planning area from about 38,000 acres to about 58,000 acres over the next 100 years.

About 69,400 acres would be managed for timber production, including 31,500 acres managed under substantial restrictions to protect or enhance other resource values. The annual Probable timber Sale Quantity (PSQ) would be 6.1 million cubic feet. To contribute to biological diversity, standing trees, snags, and down, dead woody material would be retained.

In addition to protecting listed or proposed threatened and endangered species as required by the Endangered Species Act, BLM would manage habitats of Federal Candidate, State Listed, and Bureau Sensitive species to maintain their populations at a level that would avoid endangering the species.

Management would provide for a wide variety of recreation opportunities with particular emphasis on enhancement of opportunities for camping, day-use areas, and various trails.

Three river segments covering 70 miles could be found suitable for designation by Congress under the Wild and Scenic River Act. About 37 additional miles of river found eligible for designation and studies by BLM would be found not suitable for designation.

All BLM administered lands would remain available to leasing for oil and gas and geothermal resources. Most BLM administered lands would remain available for the location of mining claims but 13,350 acres would be closed to entry under the mining laws.

The PRMP/FEIS proposes continuation of designation of seven Areas of Critical Environmental Concern (ACEC) and designation of seven new ACECs. The PRMP would designate or redesignate the following ACECs with the noted restrictions:

Area name	Acres	Vegetation harvest	OHV use	Mining location	Mineral leasing
Horse Rock Ridge ACEC (proposed ACEC/RNA)	378	P	P	P	R
Long Tom ACEC	7	P	P	P	R
Lake Creek Falls ACEC (proposed ACEC/ONA)	58	P	P	P	R
Mohawk ACEC/RNA	292	P	P	P	R
Camas Swale ACEC/RNA	314	P	P	P	R
Fox Hollow ACEC/RNA	160	P	P	P	R
Upper Elk Meadows ACEC/RNA	223	P	P	P	R
Heceta Sand Dunes (proposed ACEC/ONA)	218	P	P	P	R
Hult Marsh (proposed ACEC)	167	P	P	P	R
Cougar Mountain (proposed ACEC)	9	P	P	P	R
Grassy Mountain (proposed ACEC)	74	P	P	P	R
Coburg Hills Relict Forest Island (proposed ACEC)	804	P	P	P	R
Cottage Grove Lake Relict Forest Island (proposed ACEC)	53	P	P P	P	R
Dorena Lake Relict Forest Island	18	P	P	P	R

P = Use is prohibited

R = Use is allowed but with restrictions

NA = Use is not applicable to this area

There were eight potential ACEC areas identified that met the Bureau ACEC criteria of relevance and importance, which are not included in the PRMP. They include Coburg Hills BEHA, Fall Creek Reservoir BEHA, McKenzie River BEHA, Dorena Reservoir BEHA, Siuslaw River BEHA, Fern Ridge BEHA, Triangle Lake BEHA, and Cannery Dunes ACEC/ONA.

(BEHA = Bald Eagle Habitat Area; RFI = Relict Forest Islands)

This Notice meets the requirements of 43 CFR 1610.7-2 for designation of ACECs and the requirements of the final revised Department of the Interior-Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers (FR Vol. 47, No. 173, page 39454).

Dated: November 10, 1994.

Judy Ellen Nelson,

Eugene District Manager.

[FR Doc. 94-28239 Filed 11-17-94; 8:45 am]

BILLING CODE 4310-33-P

#### Availability of Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS), Medford, OR

**AGENCY:** Department of the Interior, Bureau of Land Management, Medford District.

**SUMMARY:** In accordance with section 202(f) of the Federal Land Policy and Management Act of 1976 and section 102(2)(C) of the National Environmental Policy Act of 1969, a Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) has been prepared for the Medford District BLM. The PRMP/FEIS describes and analyzes future options for managing approximately 867,000 acres, in

Jackson, Josephine, Curry, Coos, and Douglas counties.

**PUBLIC PARTICIPATION:** The Draft RMP/EIS was available for public review from August 1992 to December 21, 1992. Written comments were received from agencies, organizations, and individuals. All comments provided were considered during the preparation of the PRMP/FEIS.

Copies of the PRMP/FEIS are available for review in public libraries located throughout the planning area. Over 1400 copies will be mailed out to interested publics on the District's mailing list. Copies are also available from the Medford District Office, 3040 Biddle Road, Medford, Oregon, 97504. Phone (503) 770-2200. Public reading copies will be available from the following BLM locations:

Office of External Affairs, Main Interior Building, Room 5600, 406 L. Street, Washington, D.C. 20240  
Oregon State Office, 1515 S.W., 5th, Portland, OR 97504  
Medford District Office, 3040 Biddle Road, Medford, OR 97504.

Protests should be sent to the Director (WO-760), Bureau of Land Management, Division of Planning and Environmental Coordination, Room 5600, 406 L St., Washington, D.C., 20240, within the 30-day protest period. The period for filing a plan protest begins when the Environmental Protection Agency publishes in the Federal Register the Notice of Availability of the Final Environmental Impact Statement concerning the Proposed Resource Management Plan. This Federal Register notice is expected to be published on November 18, 1994 which would make the comment and protest period extend for thirty days and close on December 19, 1994. Protest statements should include the following information:

The name, mailing address, telephone number, and interest of the person filing the protest.

A statement of the issue or issues being protested.

A statement of the part or parts of the plan being protested. (Protests of proposed plan elements that merely adopt decisions made in the *Record of Decisions for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl and Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl* signed by the Secretary of the Interior will be dismissed, as the Director has no authority to overrule those decisions).

A copy of all documents addressing the issue or issues that were submitted during the planning process or a reference to the date the issue or issues were discussed for the record.

A concise statement explaining why the BLM State Director's decision is believed to be incorrect.

At the end of the 30-day protest period, the BLM may issue a Record of Decision approving implementation of any portions of the proposed plan not under protest. Approval will be withheld on any portion of the plan under protest, until the protest has been resolved.

**FOR FURTHER INFORMATION CONTACT:** Jim Keeton, PRMP/FEIS Team Leader, Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon, 97504, Phone (503) 770-2200.

Public informational meetings on the Proposed Resource Management Plan/Final Environmental Impact Statement will be held in Medford at the BLM District Office at 3040 Biddle Road on November 30, 1994 and in Grants Pass at the Fairgrounds Pavilion Room on December 1, 1994. Both meetings will start at 7:00 p.m. and extend to 9:00 p.m.

**SUPPLEMENTARY INFORMATION:** The PRMP/FEIS analyzes seven alternatives to resolve the following eleven issues: (1) Timber production practices; (2 and 3) old growth forests and habitat diversity; (4) threatened and endangered (and other special status) species habitat; (5) special areas; (6) visual resources; (7 and 8) stream/riparian/water quality; (9 and 9a) recreation resources, and wild and scenic rivers; (10) land tenure; and (11) rural interface area management.

All three existing areas of critical environmental concern (ACEC) and two research natural areas (RNA) will be retained. An additional 14 new ACECs and 11 new RNAs will be designated. The following areas have been analyzed and would be designated as an ACEC: (1) Bobby Creek, (2) Crooks Creek, (3) Baker Cypress, (4) French Flat, (5) Hole-in-the-Rock, (6) Hoxie Creek, (7) Iron Creek, (8) Jenny Creek, (9) Moon Prairie, (10) Pilot Rock, (11) Poverty Flat, (12) Tin Cup, (13) Rough and Ready, (14) Sterling Mine Ditch, (15) Brewer Spruce, (16) Bobby Creek, (17) Grayback Glade, (18) Holten Creek, (19) Lost Lake, (20) North Fork of Silver Creek, (21) Old Baldy, (22) Oregon Gulch, (23) Pipe Fork, (24) Round Top Butte, and (25) Scotch Creek.

Management prescriptions for these ACECs vary by resource value and are described in the PRMP/FEIS.

The PRMP/FEIS evaluates the eligibility of 92 rivers and streams within the planning area for further study as potential components of the National Wild and Scenic Rivers (NWSR) System. Four river segments: Big Windy Creek, East Fork Windy Creek, Dulog Creek, and Howard Creek, were found suitable for potential wild designation. No river segments have been found suitable for potential scenic or recreation designations.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register**, in June 1986. Since that time, several public meetings, mailings, and briefings were conducted to solicit comments and ideas. Any comments presented throughout the process have been considered.

This notice meets the requirements of 43 CFR 1610.7-2 for designation of ACECs and the requirements of the Final Revised USDI-USDA Guidelines for Eligibility, Classification, and Management of Rivers (47FR 39454).

Dated: November 7, 1994.

**Dave Jones,**

*District Manager, Bureau of Land Management, Medford District, U.S. Department of the Interior.*

[FR Doc. 94-28198 Filed 11-17-94; 8:45 am]

BILLING CODE 4310-33-M

[AZ-024-05-1110-06]

**Intent to Prepare an Amendment to the Phoenix Resource Management Plan Closing the Two Shoe Grazing Allotment to Livestock Grazing**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare a resource management plan amendment.

**SUMMARY:** The Bureau of Land Management, Phoenix Resource Area, is initiating the preparation of a Resource Management Plan (RMP) amendment, which will include an environmental assessment. The plan amendment will address closure of the Two Shoe grazing allotment to livestock grazing in order to promote improved recreation and watershed management. The plan amendment will guide future management on approximately 15,750 acres of land bordering Lake Pleasant Regional Park north of Phoenix, Arizona.

**DATES:** On or before December 19, 1994, interested parties may submit comments to the Bureau of Land Management at the address shown below.

**ADDRESSES:** Send comments to: Bureau of Land Management, Phoenix Resource Area, attn: Area Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

**FOR FURTHER INFORMATION CONTACT:** Russell Miller, Phoenix Resource Area, (602) 780-8090.

Dated: November 14, 1994.

**David J. Miller,**

*Associate District Manager.*

[FR Doc. 94-28516 Filed 11-17-94; 8:45 am]

BILLING CODE 4310-32-M

**National Park Service**

**General Management Plan/Environmental Impact Statement for Nez Perce National Historical Park, Idaho, Montana, Oregon, and Washington**

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The National Park Service will prepare a General Management

Plan/Environmental Impact Statement (GMP/EIS) for Nez Perce National Historical Park, Idaho, Montana, Oregon, and Washington.

In the GMP/EIS and its accompanying public review process, the National Park Service will formulate and evaluate the environmental impacts of a range of alternatives to address distinct management strategies for the park, including resource protection and visitor use. The park's purpose, significance, major interpretive themes, and management objectives will be identified as a conceptual framework for formulating these alternatives.

Scoping is the term given to the process by which the scope of issues to be addressed in the GMP/EIS is identified. Representatives of Federal, State and local agencies, American Indian tribes, private organizations and individuals from the general public who may be interested in or affected by the proposed GMP/EIS are invited to participate in the scoping process by responding to this Notice with written comments. Public concerns and issues will be addressed during public scoping meetings that are expected to begin in February or March 1995, in several communities near park sites. Notices of the public meetings will be announced prior to that time through the local media and the park's mailing list.

The draft GMP and EIS are expected to be completed and available for public review by January 1996. The final plan, environmental impact statement, and Record of Decision are expected to be completed approximately one year later.

The responsible official is Charles H. Odegaard, Regional Director, Pacific Northwest Region, National Park Service.

**DATES:** Scoping comments should be received at the park no later than May 1, 1995.

**ADDRESSES:** Persons wishing to provide initial input to the GMP/EIS scoping process should address such comments to the Superintendent, Nez Perce National Historical Park, National Park Service, Post Office Box 93, Spalding, ID 83551.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Nez Perce National Historical Park at the above address or at telephone number (208) 843-2261.

Dated: November 9, 1994.

**William C. Walters,**

*Deputy Regional Director, Pacific Northwest Region, National Park Service.*

[FR Doc. 94-28564 Filed 11-17-94; 8:45 am]

BILLING CODE 4310-70-M

### National Register of Historic Places, Notification of Pending Nomination

The nomination for the following property being considered for listing in the National Register was received by the National Park Service on Nov. 14, 1994. In order to assist in the preservation of the historic property known as the Kenwyn Apartments, 6 Kenwood Park & 413-415 Belmont Ave., Springfield, (Hampden County) Massachusetts, the 15 day comment period is hereby waived, pursuant to section 60.13(a) of 36 CFR Part 60.

Carol D. Shull,

Chief of Registration, National Register of  
Historic Places, National Park Service.

[FR Doc. 94-28524 Filed 11-17-94; 8:45 am]

BILLING CODE 4310-70-M

### Bureau of Reclamation

**Environmental Impact Statement/  
Environmental Impact Report on the  
Proposed Amendment of the Water  
Service Contract Between the United  
States of America and the Sacramento  
Municipal Utility District, Sacramento,  
CA**

AGENCY: Bureau of Reclamation,  
Interior.

ACTION: Notice of intent to prepare an  
environmental impact statement/  
environmental impact report.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, as amended, and the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and the Sacramento Municipal Utility District (SMUD) propose to prepare a joint environmental impact statement/environmental impact report (EIS/EIR) on a proposed amendment of the water service contract between the United States and SMUD. Reclamation and SMUD propose to amend the existing contract to change the point of diversion of 15,000 acre-feet annually of contract water and the place of use. The ultimate purpose of the project is to provide 15,000 acre-feet annually of municipal and industrial water supplies to the Sacramento County Water Agency (SCWA).

**DATES:** Written comments on the scope of alternatives and impacts to be considered should be sent to SMUD by January 6, 1995. A public scoping meeting will be held at 7:00 p.m., December 14, 1994, at the Sacramento Municipal Utility District Headquarters, 6201 "S" Street, Sacramento, CA 95817-1899.

**ADDRESSES:** Written comments on the project scope should be sent to Mr. Paul Olmstead, Senior Project Manager, Sacramento Municipal Utility District, 6201 "S" Street, P.O. Box 15830-MS 37, Sacramento, California 95817-1899.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roderick Hall, Environmental Specialist, Bureau of Reclamation, North Central California Area Office, 7749 Folsom Dam Road, Folsom, California 95630; telephone (916) 988-1707.

**SUPPLEMENTARY INFORMATION:** The existing contract between the United States and SMUD contains a water allotment of 75,000 acre-feet per year, 15,000 acre-feet of which are water rights water, and the remaining 60,000 acre-feet are Reclamation project water. The current point of diversion for this water is the Folsom South Canal.

SMUD seeks to amend its existing water service contract with Reclamation. Specifically, SMUD seeks to change the point of diversion of 15,000 acre-feet annually of contract water from the Folsom South Canal to existing City of Sacramento (City) diversion points on the lower American and Sacramento Rivers. SMUD additionally requests that Reclamation amend the place of use of waters from Rancho Seco, Sacramento County, California to SCWA's service area known as the Zone 40 Master Plan Study Area and Zone 40 Expansion Area. As proposed, the amended contract would assign up to 15,000 acre-feet per year of SMUD's contracted water to the SCWA via existing City diversion points along the lower American River and Sacramento River. SCWA has a stated need for the additional water and wants to be assigned a portion of the SMUD water entitlement.

Reclamation is considering the reassignment of SMUD's Central Valley Project water entitlement to SCWA. Upon amendment of the existing contract with Reclamation, SMUD would assign the water to SCWA for municipal and industrial uses in conformance with the Sacramento County General Plan. The proposed project is located entirely in Sacramento County. The City will be responsible for diversion and treatment of the assigned water prior to delivery to SCWA. Changing the point of delivery from the Folsom South Canal to the lower American River or Sacramento River will allow the diversion of the SMUD water at City diversion points. No physical improvements or modifications to water storage, conveyance, or

treatment facilities will be required as a part of this project.

Four alternative points of diversion will be evaluated in the EIS/EIR. These alternatives would result in diversion of 15,000 acre-feet annually from: (1) The City's Fairbairn Treatment Plant on the lower American River; (2) the City's Sacramento River Treatment Plant on the Sacramento River downstream of the confluence of the American and Sacramento Rivers; (3) the City's Riverside Water Treatment Plant on the Sacramento River south of the confluence of the Sacramento and American Rivers; and (4) the City's proposed water treatment plant on the Sacramento River upstream of the confluence of the Sacramento and American Rivers.

A public scoping process and pre-scoping meetings with resources agencies will take place to elicit information for the determination of the scope of the environmental impacts and issues related to the proposal. The results of the scoping process will help Reclamation and SMUD determine the scope and extent of the impact analysis.

Dated: November 4, 1994.

Dan M. Fuels,

Acting Regional Director.

[FR Doc. 94-28517 Filed 11-17-94; 8:45 am]

BILLING CODE 4310-95-P

### INTERSTATE COMMERCE COMMISSION

#### Notice of Intent to Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

1. The name of the parent corporation is: ProSource, Inc. The principle office address of the parent corporation is: 550 Biltmore Way, 10th Floor, Coral Gables, FL 33134.

2. The wholly owned subsidiaries of ProSource, Inc. which will participate in the operations are:

Name	State of incorporation
ProSource Services Corporation d/b/a ProSource Distribution Services.	Delaware.
ProSource Distribution Services, Inc.	Delaware.

Vernon A. Williams,  
Secretary.

[FR Doc. 94-28519 Filed 11-17-94; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-385 (Sub-No. 1X)]

**Georgia Southwestern Division, South Carolina Central Railroad Co.—  
Abandonment Exemption—in Dodge and Wilcox Counties, GA**

Georgia Southwestern Division, South Carolina Central Railroad Co. (Georgia Southwestern) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon 18 miles of its rail line, extending from milepost SL629 at Rhine to milepost SL647 near Rochelle, in Dodge and Wilcox Counties, GA.

Georgia Southwestern has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.08 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 18, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to

<sup>1</sup> A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its

file an OFA under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking requests under 49 CFR 1152.29<sup>3</sup> must be filed by November 28, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 8, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael W. Blaszak, 211 South Leitch Avenue, LaGrange, IL 60525-2162.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Georgia Southwestern has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 23, 1994. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 10, 1994.

By the Commission, David M. Konschnik,  
Director, Office of Proceedings.

Vernon A. Williams,  
Secretary.

[FR Doc. 94-28522 Filed 11-17-94; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB-290 (Sub-No. 159X)]

**Norfolk and Western Railway Company—Abandonment Exemption—in Campbell County, VA**

Norfolk and Western Railway Company (N&W) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon approximately 0.66 miles of rail line between stations 45+50 and 80+41 at Lynchburg, in Campbell County, VA.

N&W has certified that: (1) no local or overhead traffic has moved over the line

request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

<sup>2</sup> See, *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 18, 1994 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,<sup>1</sup> formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),<sup>2</sup> and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 28, 1994.<sup>3</sup> Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 8, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

<sup>1</sup> A stay will be issued routinely where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Environmental Analysis in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

<sup>2</sup> See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

<sup>3</sup> The Commission will accept late-filed trail use statements so long as it retains jurisdiction.

N&W has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by November 18, 1994. Interested persons may obtain a copy of the EA from SEA by writing to it at (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEA at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 10, 1994.

By the Commission, David M. Konschnik,  
Director, Office of Proceedings.

Vernon A. Williams,  
Secretary.

[FR Doc. 94-28521 Filed 11-17-94; 8:45 am]

BILLING CODE 7035-01-P

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Hearings of the Judicial Conference Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and Rules of Evidence

**AGENCY:** Judicial Conference of the United States Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and Rules of Evidence.

**ACTION:** Notice of open hearings.

**SUMMARY:** The Advisory Committees on Rules of Appellate, Bankruptcy, Civil, and Criminal Procedure, and Rules of Evidence has proposed amendments to the following rules:

Appellate rules—21, 25, 26, 27, 28, and 29;

Bankruptcy Rules—1006, 1007, 1019, 2002, 2015, 3002, 3016, 4004, 5005, 7004, 8008, and 9006;

Civil Rule—5; and

Criminal Rules—16, and 32.

Evidence Rules—The committee seeks comment on its tentative decision not to amend 25 rules.

Public hearings will be held on the amendments to: Appellate Rules in Denver, Colorado on January 23, 1995; Bankruptcy Rules in Washington, D.C. on February 24, 1995; Civil Rules in Dallas, Texas on January 10, 1995; Criminal Rules in New York, New York

on December 12, 1994, and Los Angeles, California on January 27, 1995; and Evidence Rules in New York, New York on January 5, 1995.

The Judicial Conference Committee on Rules of Practice and Procedure submits these rules for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary as soon as convenient and, in any event, no later than February 28, 1995.

Anyone interested in testifying should write to Mr. Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, D.C. 20544, at least 30 days before the hearing.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C., telephone (202) 273-1820.

Dated: November 14, 1994.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 94-28508 Filed 11-17-94; 8:45 am]

BILLING CODE 2210-01-M

### Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

**AGENCY:** Judicial Conference of the United States; Advisory Committee on Rules of Bankruptcy Procedure.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation and will commence each day at 8:30 a.m.

**DATE:** December 8-9, 1994.

**ADDRESS:** Thurgood Marshall Federal Judiciary Building, Fourth Floor Agency Conference Room, One Columbus Circle NE., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:**

John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, D.C. 20544, telephone (202) 273-1820.

Dated: November 14, 1994.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 94-28507 Filed 11-17-94; 8:45 am]

BILLING CODE 2210-01-M

## DEPARTMENT OF JUSTICE

### Lodging of a Modification of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a modification of the December 16, 1992 Consent Decree in *United States v. Biggi, et al.*, Civ. No. 90-806 (D. Ore.), was lodged with the United States District Court for the District of Oregon on November 10, 1994.

The proposed Modification of the Consent Decree would remove about .62 acres from the protection of the decree, and add new signatories—a regional transit authority and the City of Beaverton. The new signatories would assume certain remaining responsibilities from the defendants, would add about 2.8 acres as a substitute for the .62 acres, and would perform additional mitigation at a parcel now subject to the Consent Decree provisions. At these sites, the Additional Site Mitigation Plan requires substantial wetlands enhancement work, and modification of the planting plans at existing Consent Decree sites will also occur.

The Department of Justice will receive, until thirty (30) days from the date of this notice, written comments relating to the proposed Consent Decree. Comments should be addressed to the United States Department of Justice, Assistant Attorney General, Environment and Natural Resources Division, 10th Street and Pennsylvania Avenue, NW., 20530, to the attention of Lewis M. Barr, Trial Attorney, Environmental Defense Section, and should refer to *United States v. Biggi, et al.*, Civ. No. 90-806 (D. Ore.) and DJ Reference No. 90-5-1-1-3443.

The proposed Modification of the Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Oregon, 503 Gus J. Solomon United States Courthouse, 620 SW. Main Street, Portland, Oregon 97205 during regular business hours, or a copy may be requested from Lewis M. Barr at (202) 514-4206.

Lois J. Schiffer,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 94-28563 Filed 11-17-94; 8:45 am]

BILLING CODE 4410-01-M

**Drug Enforcement Administration**

[Docket No. 94-70]

**Fredna Gowder-Waters, D.D.S.; Denial of Application for Registration**

On July 5, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Fredna Gowder-Waters D.D.S. (Respondent), of Lula, Georgia, proposing to deny her March 12, 1991 application for registration as a practitioner. The basis for the Order to Show Cause was that Respondent was no longer authorized by state law to handle controlled substances and thus was ineligible for DEA registration pursuant to 21 U.S.C. 823(f).

Respondent requested a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On August 17, 1994 the Government filed a Motion for Summary Disposition alleging that Respondent no longer held state authorization to handle controlled substances for reason that the Georgia Board of Dentistry revoked Respondent's license to practice dentistry on September 10, 1992. Respondent filed a Motion for Judgment in response to the Government Motion for Summary Disposition arguing that DEA had no jurisdiction in the matter.

On August 24, 1994 the Administrative law judge entered her opinion and recommend decision granting the Government's Motion for Summary Disposition and recommending that the Respondent's application for registration be denied. Respondent subsequently filed exceptions captioned as a Response and a Legal Argument for Notice. The administrative law judge transmitted the record to the Deputy Administrator on September 26, 1994. On October 11, 1994 the administrative law judge transmitted, for consideration as further exceptions, a Notice of Appeal filed by Respondent on September 29, 1994.

The Deputy Administrator has considered the record in its entirety and, under the provision of 21 CFR 1316.67, enters his final order in this matter, based on findings of fact and conclusions of law as hereinafter set forth.

No evidentiary hearing was held in this case as there were no factual issues involved, only a question of law. Judge Bittner found that Respondent lacked state authorization to handle controlled substances in the State of Georgia, the jurisdiction in which the Respondent is registered with the DEA. Judge Bittner concluded that DEA has no authority to

register a practitioner, unless that practitioner is authorized by the state to dispense controlled substances.

The DEA has consistently held that it does not have statutory authority under the Controlled Substances Act to register a practitioner unless that practitioner is authorized by the state to dispense controlled substances. See *Bobby Watts, M.D.* 53 FR 11919 (1988); *Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992).

The Deputy Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. The Deputy Administrator has also considered Respondent's exceptions and finds them to be without merit. Based on the foregoing, the Deputy Administrator concludes that Respondent's application for registration must be denied. 21 U.S.C. 823(f) and 824(a)(3). Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104 (59 FR 23637), hereby orders that the application for registration of Fredna Gowder-Waters, D.D.S., be, and it hereby is, denied. This order is effective November 18, 1994.

Dated: November 9, 1994.

**Stephen H. Greene,**  
Deputy Administrator.

[FR Doc. 94-28489 Filed 11-17-94; 8:45 am]

BILLING CODE 4410-09-M

**DEPARTMENT OF LABOR****Employment Standards Administration****Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended,

40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because, the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, N.W., Room S-3014,  
Washington, D.C. 20210.

### New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State:

#### Volume III

##### Florida

FL940096 (Nov. 18, 1994)  
FL940097 (Nov. 18, 1994)

#### Volume V

##### Iowa

IA940077 (Nov. 18, 1994)

##### Kansas

KS940065 (Nov. 18, 1994)  
KS940066 (Nov. 18, 1994)

##### Texas

TX940116 (Nov. 18, 1994)

### Modification to General Wage Determinations Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the *Federal Register* are in parentheses following the decisions being modified.

#### Volume I

##### New Jersey

NJ940003 (Feb. 11, 1994)  
NJ940004 (Feb. 11, 1994)  
NJ940009 (Feb. 11, 1994)  
NJ940010 (Mar. 18, 1994)

#### Volume II

##### None

#### Volume III

##### Alabama

AL940007 (Feb. 11, 1994)  
AL940008 (Feb. 11, 1994)  
AL940034 (Mar. 25, 1994)  
AL940052 (Mar. 25, 1994)

##### Florida

FL940016 (Feb. 11, 1994)  
FL940048 (Feb. 11, 1994)  
FL940052 (Feb. 11, 1994)

#### Volume IV

##### Illinois

IL940001 (Feb. 11, 1994)  
IL940002 (Feb. 11, 1994)  
IL940009 (Feb. 11, 1994)  
IL940046 (Apr. 15, 1994)  
IL940051 (Apr. 15, 1994)  
IL940073 (Apr. 15, 1994)  
IL940082 (Apr. 15, 1994)

##### Wisconsin

WI940027 (Feb. 11, 1994)

#### Volume V

##### Iowa

IA940005 (Feb. 11, 1994)

IA940021 (Feb. 11, 1994)

##### Kansas

KS940006 (Feb. 11, 1994)  
KS940007 (Feb. 11, 1994)  
KS940009 (Feb. 11, 1994)  
KS940010 (Feb. 11, 1994)  
KS940012 (Feb. 11, 1994)  
KS940014 (Feb. 11, 1994)  
KS940016 (Feb. 11, 1994)  
KS940018 (Feb. 11, 1994)  
KS940019 (Feb. 11, 1994)  
KS940020 (Feb. 11, 1994)  
KS940021 (Feb. 11, 1994)  
KS940023 (Feb. 11, 1994)  
KS940025 (Feb. 11, 1994)  
KS940026 (Feb. 11, 1994)  
KS940033 (Feb. 11, 1994)

##### New Mexico

NM940001 (Feb. 11, 1994)

#### Volume VI

##### California

CA940002 (Feb. 11, 1994)  
CA940004 (Feb. 11, 1994)  
CA940027 (Feb. 11, 1994)

##### Colorado

CO940001 (Feb. 11, 1994)  
CO940006 (Feb. 11, 1994)  
CO940024 (Feb. 11, 1994)

##### Idaho

ID940001 (Feb. 11, 1994)

##### North Dakota

ND940002 (Feb. 11, 1994)

##### Washington

WA940001 (Feb. 11, 1994)  
WA940002 (Feb. 11, 1994)  
WA940003 (Feb. 11, 1994)  
WA940005 (Feb. 11, 1994)  
WA940007 (Feb. 11, 1994)  
WA940008 (Feb. 11, 1994)  
WA940011 (Feb. 11, 1994)

### General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S.  
Government Printing Office,  
Washington, D.C. 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which included all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, D.C. this 10th Day of November, 1994.

Alan L. Moss,

Director, Division of Wage Determination.

[FR Doc. 94-28312 Filed 11-17-94; 8:45 am]

BILLING CODE 4570-27-M

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94-095]

### Government-Owned Inventions; Available for Licensing.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

**SUMMARY:** The inventions listed below are owned by the U.S. Government and are available for domestic, and possibly, foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATE: November 18, 1994.

#### FOR FURTHER INFORMATION CONTACT:

National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, telephone (202) 358-2041, fax (202) 358-4341.

Patent Application 08/000,000:

Acceleration Recorder and Playback Module; filed July 21, 1994

Patent Application 08/282,843: Control System and Method for Prosthetic Devices; filed July 26, 1994

Patent Application 08/000,000: Control System and Method for Prosthetic Devices; filed July 27, 1994

Patent Application 08/000,000: Airplane Takeoff and Landing Performance Monitoring System; filed July 21, 1994

Patent Application 08/000,000:

Electrically Conductive Polyimide Film Containing Gold (III) Ions; filed July 22, 1994

Patent Application 08/000,000:

Electrically Conducting Polyimide Film Containing Tin Complexes; filed July 28, 1994

Patent Application 08/278,724:

Directional Electrostatic Accretion Process Employing Nozzleless Acoustic Droplet Formation; filed July 11, 1994

Patent Application 08/273,542: Method and Apparatus for Polardiometric Pyrometer; filed July 6, 1994

Patent Application 08/273,511: Ultra High Purity, Dimensionally Stable Invar 36; filed July 6, 1994

Patent Application 08/014,584: Aerodynamic Surface Distortion System for High Angle of Attack Forebody Vortex Control; filed February 8, 1993

Patent Application 07/889,347: Engine-Only Flight Control System; filed May 28, 1992

Patent Application 07/907,548: Object Recognition Using a Coarse-Coded Third-Order Neural Network; filed July 2, 1992

Patent Application 08/127,886: Microprocessor Control of Multiple Peak Power Tracking DC/DC Converters for Use With Solar Cell Arrays; filed July 12, 1993

Patent Application 07/993,744: Robot Friendly Probe and Socket Assembly; filed December 14, 1992

Patent Application 07/996,263: High Density Cell Culture System; filed December 23, 1992

Patent Application 07/997,265: Atomic Oxygen Reactor Having at Least One Sidearm Conduit Thereof; filed December 22, 1992

Patent Application 08/138,046: Method for Making a Dynamic Pressure Sensor and a Pressure Sensor Made According to the Method; filed October 7, 1993

Patent Application 07/904,619: Tough High Performance Composite Matrix; filed June 26, 1992

Patent Application 07/968,082: A Tough High Performance Composite Matrix; filed October 27, 1992

Patent Application 08/046,256: Jet Mixer Noise Suppressor Using Acoustic Feedback; filed April 14, 1993

Patent Application 07/991,403: Multi-Wave Length Pyrometer for Gray and Non-Gray Surfaces in the Presence of Interfering Radiation; filed December 14, 1992

Patent Application 08/067,184: High Temperature Creep and Oxidation Resistant Chromium Silicide Matrix Alloy Containing Molybdenum; filed May 26, 1993

Patent Application 08/007,874: High Temperature, Bellows Hybrid Seal; filed January 22, 1993

Patent Application 08/098,918: Plasma ARC Welding Weld Imaging; filed July 29, 1993

Patent Application 07/883,957: Method and Apparatus for Removing Unwanted Reflections from an Interferometer; filed May 15, 1992

Patent Application 07/954,109: Operator-Tailored Adjustable Control Station with Movable Monitors and Cameras for Viewing

Systems in Robotics; filed September 28, 1992.

November 9, 1994.

Edward A. Frankle,  
General Counsel.

[FR Doc. 94-28482 Filed 11-17-94; 8:45 am]

BILLING CODE 7510-01-M

[Notice 94-094]

# **Government-Owned Inventions; Available for Licensing.**

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic, and possibly, foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATE: November 18, 1994.

FOR FURTHER INFORMATION CONTACT: National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, telephone (202) 358-2041, fax (202) 358-4341.

Patent Application 08/000,000: Absorbent Pads for Containment, Neutralization, and Clean-up of Environmental Spills Containing Chemically; filed August 1, 1994

Patent Application 08/288,112: Displaceable Spur Gear Torque Controlled Driver and Method; filed August 10, 1994

Patent Application 08/288,102: Bevel Gear Driver and Method Having Torque Limit Selection; filed August 10, 1994

Patent Application 08/288,114: Pressurized Fluid Torque Driver Control and Method Driver; filed August 10, 1994

Patent Application 08/291,791: Recombinant Protein Production and Insect Cell Culture and Process; filed August 16, 1994

Patent Application 08/297,467: Method for Forming a Glove Attachment; filed August 29, 1994

Patent Application 08/286,032: Electrically Conductive Polyimides Containing Silver Trifluoroacetylacetonate; filed August 2, 1994

Patent Application 08/286,031: Tactile Display Device Using an

Electrorheological Fluid; filed August 4, 1994

Patent Application 08/292,621: Method for Molding Structural Parts Utilizing Modified Silicone Rubber; filed August 12, 1994

Patent Application 08/000,000: Noninvasive Technique to Measure Intracranial Pressure Volume Index in Humans; filed August 22, 1994

Patent Application 08/000,000: Nonaqueous Slip Casting of High Temp Ceramic Super-Conductors Using an Investment Casting Tech; filed August 23, 1994

Patent Application 08/000,000: Adjustable Bias Column End Joint Assembly; filed August 24, 1994

Patent Application 08/000,000: A Direct Process for Preparing Semi-Crystalline Polyimides; filed August 30, 1994

Patent Application 08/000,000: A Solvent Resistant Copolyimide; filed August 30, 1994

Patent Application 08/000,000: Copolyimides Prepared from ODA, BTDA 3,4'-ODA; filed August 30, 1994

Patent Application 08/298,866: Optical Homodyne System for Coherent Communications with Transmitted Local Oscillator; filed August 31, 1994

Patent Application 08/288,364: A Method of Poisson's Ratio Imaging Within a Material Part; filed August 9, 1994

Patent Application 08/288,365: A Method and Apparatus for Measuring Homogeneity with a Material Part; filed August 9, 1994

Patent Application 08/283,728: A Global Positioning System Synchronized Active Light Autonomous Docking System; filed August 1, 1994

Patent Application 08/291,792: Long Life Na/NiCl<sub>2</sub> Cells; filed August 16, 1994

Patent Application 07/904,620: Method and Apparatus for Non-Contact Hole Eccentricity and Diameter Measurements; filed June 26, 1992

Patent Application 08/123,945: Metal Inert Gas Welding System for Use in Vacuum; filed September 20, 1993

Patent Application 08/069,481: Quick Connect Fastener; filed June 1, 1993

Patent Application 08/077,470: Superconductive Material and Magnetic Field for Damping and Levitation Support and Damping of Cryogenic; filed June 15, 1993

Patent Application 07/744,118: A Generalized Compliant Motion Primitive; filed August 23, 1994.

Dated: November 9, 1994.

Edward A. Frankle,  
General Counsel.

[FR Doc. 94-28483 Filed 11-17-94; 8:45 am]

BILLING CODE 7510-01-M

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 14, 1994, the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued on November 14, 1994 for the following applicants:

John L. Bengtsonr ....	Permit #95-023.
Thomas A. Day .....	Permit #95-024.
Donal T. Manahan ...	Permit #95-025.
Ronald G. Koger .....	Permit #95-026.

Nadene G. Kennedy,

Permit Office.

[FR Doc. 94-28475 Filed 11-17-94; 8:45 am]

BILLING CODE 7555-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-26158]

### Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

November 14, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 6, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

#### New England Electric System (70-6583)

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, has filed a post-effective amendment to its application-declaration under Sections 6(a) and 7 of the Act.

By orders dated, October 12, 1990 (HCAR No. 25166) and July 1, 1992 (HCAR No. 25568), the Commission authorized, among other things, EUA to issue and sell, and purchase on the open market and sell, from time to time, through December 31, 1994, up to 5.8 million of its authorized but unissued common shares pursuant to its Dividend Reinvestment and Common Share Purchase Plan ("Plan"). As of November 1, 1994, EUA had issued and sold 5,259,393 of its authorized common shares pursuant to the Plan.

EUA now proposes to extend its authorization to issue and sell, through December 31, 1997, the remaining 540,607 shares of common stock under the Plan. In addition, EUA proposes to issue and sell, through December 31, 1997, up to one million additional shares of common stock under the Plan (collectively, "Common Stock").

The price per share of the Common Stock credited to a participant's account (whether through reinvestment of dividends or cash payments) will be 100% of the average of the closing sales prices of EUA's common stock as reported by The Wall Street Journal as composite transactions during the last five trading days immediately preceding the investment date.

#### New England Energy Incorporated (70-7055)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, an

electric public-utility subsidiary company of New England Electric System ("NEES"), a registered holding company, has filed a post-effective amendment to its application-declaration filed under Sections 9(a) and 10 of the Act.

By order dated October 30, 1974 (HCAR No. 18635), among other things, NEEI was authorized to enter into a partnership ("Partnership") with Samedan Oil Corporation ("Samedan"), a subsidiary of Noble Affiliates, Inc., both unaffiliated companies. The Partnership was formed to explore for and develop oil and gas prospects in order to provide a fuel supply for NEES system companies.

An order dated July 19, 1978 (HCAR No. 20632) authorized NEEI's methods of accounting for the costs (including capital costs) of it soil and gas exploration and development program. The methods of accounting were devised for the purpose of amortizing the costs and determining the prices at which NEEI sold fuel to New England Power Company ("NEPCO"), an affiliated electric public-utility company, pursuant to Section 13(b) of the Act ("Pricing Policy"). These costs include a return prescribed by the Commission on the equity investment in NEEI maintained by NEES from time-to-time. Under the Pricing Policy, the proceeds from the sale to nonaffiliates of production from all of NEEI's properties were applied first to recovery of amortization and production costs. Any excess was passed on to NEPCO through a reduction in the price charged by NEEI for fuel sold to NEPCO under a fuel purchase contract ("Purchase Contract"). Any deficiency in such proceeds below NEEI's costs was recoverable by NEEI from NEPCO by an addition to the price for fuel sold to NEPCO under the Purchase Contract.

An order dated October 22, 1985 (HCAR No. 23873) amended the Pricing Policy ("Modified Pricing Policy"). Among other things, the Modified Pricing Policy was made applicable only to oil and gas prospects recorded on NEEI's books prior to January 1, 1984 ("Pre-1984 Prospects"). All costs of the Pre-1984 Prospects, including exploration and development costs and capital costs, but excluding any return after 1982 on equity invested in the program, were capitalized into a full cost pool ("Full Cost Pool"). Amortization of the Full Cost Pool, in combination with low oil and gas prices, resulted in losses which were passed through to NEPCO and under the Purchase Contract in accordance with the Modified Pricing Policy. NEPCO was allowed to recover from its

customers all amounts which it paid to NEEI in connection with the Pre-1984 Prospects.

By an amendment to the Partnership agreement dated February 5, 1985, NEEI elected not to participate in new oil and gas prospects initiated by Samedan after December 31, 1986, but NEEI remained obligated to pay its share of expenses for exploration, development and production of prospects acquired on or before December 31, 1986.

By orders dated October 3, 1991, December 21, 1993 and August 24, 1994 (HCAR Nos. 25390, 25958 and 26110, respectively), NEEI was authorized to contribute, through December 31, 1994, up to \$45 million to the Partnership.

NEEI now proposes to contribute, through December 31, 1998, up to an additional \$30 million to the Partnership for exploration and development of existing oil and gas prospects of the Partnership.

#### **The Connecticut Light & Power Company (70-7543)**

The Connecticut Light and Power Company ("CL&P"), Seldon Street, Berlin, Connecticut 06037, an electric utility subsidiary company of Northeast Utilities, a registered holding company, has filed a post-effective amendment under Sections 6(a) and 7 of the Act to its declaration previously filed under Sections 6(a) and 7 and Rule 50(a)(5) thereunder.

By Commission order dated October 24, 1988 (HCAR No. 24734), CL&P was authorized to finance certain pollution control and/or sewage or solid waste disposal facilities at the Seabrook Station No. 1 nuclear electric generating plant ("Facilities"). The cost of acquiring, constructing and installing the Facilities was financed by CL&P through its use of the net proceeds from the sale by the Industrial Development Authority of the State of New Hampshire ("IDA") of its pollution control revenue bonds ("Bonds") in the principal amount of \$10 million. The Bonds were issued pursuant to an Indenture of Trust between the IDA and Baybank Middlesex, as trustee ("Trustee"), and the proceeds of the issuance of the Bonds were loaned to CL&P pursuant to a Financing Agreement ("Loan Agreement") between CL&P and the IDA.

In order to obtain the benefits of a high quality rating for the Bonds, CL&P's obligations under the Loan Agreement are secured by an irrevocable letter of credit ("Letter of Credit") in the amount of \$10,833,334 issued by Union Bank of Switzerland, New York Branch ("Bank") in favor of the Trustee. The Letter of Credit secures \$10 million of

principal amount plus interest in the amount of \$833,334 at the maximum rate of 15% per annum for 200 days.

CL&P now proposes to amend the Reimbursement and Security Agreement, dated as of October 1, 1988 between CL&P and the Bank in order to: (1) change the expiration date of the Letter of Credit, from perpetual to a three-year term ending November 1, 1997, extendible for successive one-year terms thereafter indefinitely during the term of the Loan Agreement, with the consent of CL&P and the Bank; (2) change the annual Letter of Credit fee payable to the Bank; and (3) extend, modify or replace the Letter of Credit provided by the Bank, as permitted by the Loan Agreement, by delivery of a substitute credit facility, consisting of a new letter of credit, and related agreements, to be provided by a substitute bank to be chosen by CL&P ("Substitute Bank").

The proposed Letter of Credit fee will be changed from 0.45% of the Letter of Credit amount to a percentage ranging from 0.35% to 0.70%, depending on CL&P's bond ratings from time-to-time as determined by Moody's and Standard and Poor's. At CL&P's current bond rating the annual Letter of Credit fee would change from 0.45% to 0.40%, representing a reduction of \$5,417 per annum.

CL&P may extend, modify or replace the Bank's Letter of Credit with a new letter of credit ("Substitute LOC") to be issued by the same or a Substitute Bank during the term of the Bonds. The Substitute LOC would be issued under a new letter of credit and reimbursement agreement ("New LOC Agreement") substantially identical to the Letter of Credit and Reimbursement Agreement, dated as of September 1, 1993 among CL&P, Deutsche Bank AG, New York Branch and various co-agents and participating banks, as approved by Commission order, dated September 15, 1993 (HCAR No. 25881). The New LOC Agreement will be in accordance with the Loan Agreement and will provide that: (1) the total amount available to be drawn under any such extended, modified, or replacement letter of credit does not exceed \$10,833,334; (2) the annual letter of credit costs applicable to any such extension, modification, or replacement do not exceed 1.00% per annum of the total amount available; (3) tender advances bear interest until paid at a rate not to exceed the higher of (a) the prime rate plus 2.00% or (b) the Federal funds rate plus 2.00%; (4) such extension, modification, or replacement is otherwise on terms that are substantially similar in all material

respects to those applicable to the New LOC Agreement.

#### **Central and South West Services, Inc. (70-7671)**

Central and South West Services, Inc. ("CSWS"), a nonutility subsidiary company of Central and South West Corporation ("CSW"), a registered holding company, has filed a post-effective amendment under Sections 9(a) and 10 of the Act.

By order dated August 10, 1990 (HCAR No. 25132) ("1990 Order"), CSWS was authorized to license and sell to nonassociate entities through December 31, 1992 specialized computer programs and to provide support services to licensees and entities that purchased such software. Such support services were to include program enhancements and problem resolution.

The software was developed in connection with services CSWS rendered to CSW and its public-utility subsidiary companies. CSWS was authorized to license and sell the software to offset the cost of development and modification. Profits from licenses and sales were to be credited to CSW companies in accordance with their respective contributions to the funds required for the initial development of the software. The software was to include specialized software acquired from third parties for particular applications.

The 1990 Order provided that CSWS would not increase staff or equipment in connection with efforts to license and sell the software. It also provided that annual expenses to license and sell the software and to develop the programs would not exceed \$100,000. Finally, the 1990 Order provided that CSWS would account for its receipts for licenses and sales in accordance with the Commission's Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies and that CSWS would annually file a Form U-13-60 with the Commission.

By order dated December 18, 1992 (HCAR No. 25714) ("1992 Order"), CSWS was authorized to license and sell to nonassociate entities through December 31, 1994 specialized computer programs and to provide support services to licensees and entities that purchased such software. Such support services were to be sold to nonassociate companies for under cost.

Since inception of the program, revenues and costs associated with development of nonassociate business from software sales have totalled approximately \$36,000 and from related services approximately \$9,700. Proceeds

from sales of software are credited or returned to public-utility subsidiary companies who support the original development of the product for internal use in accordance with their respective contributions.

CSWS continues to develop software and data utilized by public-utility and other subsidiary companies of CSW. In recent years, CSWS has developed software for tax and rate matters, graphical analysis software, and databases of financial and operational statistics and chemical label information. From time to time, CSWS receives inquiries from nonassociate entities relative to its software and data.

CSWS now requests authorization, through December 31, 1999, to make expenditures up to \$1 million per calendar year and \$250,000 per project to develop or change software for nonassociated entities or to market software, services or reserve computer capacity and to add up to ten employees to support these activities. CSWS also seeks authorization to sell reserve computer capacity and provide data management services to nonassociate entities—largely customers of public-utility subsidiary companies. CSWS would limit computer capacity sales to nonassociated entities to 50 percent of its total capacity.

#### West Texas Utilities Company (70-8057)

West Texas Utilities Company ("WTU"), 301 Cypress Street, Abilene, Texas 79601-5820, a wholly owned electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, has filed a post-effective amendment to its declaration under Sections 6(a) and 7 of the Act.

By order dated October 7, 1992 (HCAR No. 25649) ("Order"), WTU was authorized, among other things, to issue and sell up to an aggregate principal amount of \$150 million of First Mortgage Bonds ("New Bonds"), in one or more series, from time to time through December 31, 1994. WTU was further authorized to use the proceeds from the sale of New Bonds: (1) to redeem all or a portion of its then outstanding \$75 million, 8 $\frac{1}{4}$ % First Mortgage Bonds, Series N, due May 1, 2016 ("Series N Bonds"); (2) to purchase, through a tender offer, all or a portion of its then outstanding \$65 million, 9 $\frac{1}{4}$ % First Mortgage Bonds, Series O, due December 1, 2019 ("Series O Bonds"); (3) to repay outstanding short-term borrowings; and/or (4) for other general corporate purposes. In October 1992, WTU issued \$75 million

of New Bonds and used the proceeds to redeem the Series N Bonds.

WTU now proposes to extend the authorization to issue and sell the remaining \$75 million of New Bonds from December 31, 1994 to December 31, 1996, and use the proceeds to redeem the Series O Bonds.

#### Allegheny Power System, Inc., et al. (70-8411)

Allegheny Power System, Inc. ("APS"), 12 East 49th Street, New York, New York, 10017, a registered holding company, has filed a post-effective amendment to its application-declaration under Sections 6(a), 7, 9(a), 10, 12(b), 13(b), 32 and 33 of the Act and Rules 45, 53, 87, 90 and 91 thereunder.

APS requests authorization to allow its nonutility subsidiary company, AYP Capital, Inc. ("AYP"), to engage in preliminary development activities, to engage in activities related to the ownership and/or operation of companies for the acquisition and ownership of exempt wholesale generators ("EWGs"), to engage in contracts for consulting services to nonaffiliated companies, and to increase investment in AYP from \$500,000 to \$3 million through purchases of AYP stock or capital contributions through December 31, 1996.

By order dated July 14, 1994 (HCAR No. 26085), APS was authorized to organize AYP and to invest therein up to \$500,000 to explore investment opportunities in companies in the area of emerging technologies related to the core utility business of APS and companies for the acquisition and ownership of EWGs in accordance with Section 32 of the Act.

AYP now proposes to expand the scope of those previously approved activities to include activities related to the ownership and/or operation of companies for the acquisition and ownership of EWGs. In addition, AYP proposes to engage in preliminary development activities relative to opportunities with (i) qualifying cogeneration facilities, located throughout the U.S., in accordance with the Public Utility Regulatory Act of 1978 ("PURPA") and regulations thereunder; (ii) qualifying small power production facilities ("SPPs"), located throughout the U.S., in accordance with PURPA and the regulations thereunder; (iii) nonqualifying cogeneration facilities, nonqualifying SPPs, and independent power production facilities ("IPPs") located within the service territories of APS's public-utility subsidiary companies; (iv) EWGs; (v) companies involved in new

technologies related to the core business of APS; and (vi) foreign utility companies in accordance with Section 33 of the Act.

Preliminary development activities would include research and analysis of potential investment opportunities, site investigations, proposals for finance programs, and other activities relative to the feasibility of investment opportunities. APS states that no investment would be made by AYP in these businesses beyond the amounts authorized for preliminary development activities without specific Commission approval.

In addition, APS proposes that AYP be authorized to provide consulting services to nonaffiliated companies relative to (i) management services and technical capabilities and expertise; (ii) technical and procedural services; (iii) computer hardware and software services; (iv) electronic systems and control systems services; and (v) training sessions and seminars.

#### American Electric Power Company, Inc. et al. (70-8489)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its nonutility subsidiary company, AEP Investments, Inc. ("AEPI"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration under Sections 6(a), 7, 9(a), 10, 12(b) and 13(b), of the Act and Rules 45, 51, 90 and 91 thereunder.

By orders dated December 11, 1991 (HCAR No. 25424) and November 2, 1992 (HCAR No. 25667), the Commission authorized AEP to organize and acquire AEPI, whose primary purpose would be to invest in the development of demand-side management projects, and, in particular, authorized AEPI to invest in the development of electronic light bulb technology with InterSource Technologies, Inc.

AEP now proposes making cash capital contributions in AEPI in an amount not to exceed \$10 million for the purpose of funding: (1) AEPI's preliminary development and administrative activities in amounts of up to \$2 million; (2) AEPI's investment in an amount not exceeding \$3 million in Holtec International ("Holtec"), a nonassociate company, for the development of the HI-STAR and other series of multi-purpose containers to be used for storage and transportation of spent nuclear fuel; and (3) AEPI's acquisition of a limited partnership interest in EnviroTech Investment Fund I Limited Partnership ("EnviroTech

Partnership") for an amount not in excess of \$5 million.

AEPI's preliminary development activities will include acquiring options and rights, contract drafting and negotiating, preparation of proposals and other necessary activities to identify and analyze feasible investment opportunities. AEPI also proposes to engage in administrative activities including the ongoing personnel, accounting, engineering, legal, financial and other support activities necessary for AEPI to manage its investments and its preliminary development activities.

AEPI also proposes to invest up to \$3 million from time-to-time through December 31, 2002 in the development and licensing by Holtec of the HI-STAR and other series of multi-purpose containers to be used for storage and transportation of spent nuclear fuel ("HI-STAR"). Holtec is a privately held corporation engaged in providing installation, design and fabrication work, as well as consulting and engineering services to utilities.

Under the HI-STAR Investment Agreement between AEPI and Holtec, AEPI has agreed, subject to approval of this Commission, to pay Holtec \$1.2 million to reimburse Holtec for a portion of HI-STAR development costs and to support licensing and development of HI-STAR. The funds will be paid over approximately 30 months beginning when this Commission approves the investment. In return for AEPI's investment, Holtec will pay AEPI on a quarterly basis 2 1/4% of Holtec's revenues resulting from the worldwide sale of the HI-STAR System other than to an affiliate of AEPI.

AEPI will also have the option to invest additional amounts if the Nuclear Regulatory Commission revenue charges exceed \$625,000 and receive an additional 0.012% of the revenues for each \$300,000 of additional investment up to an aggregate total investment of \$2.6 million. AEPI may invest \$400,000 toward development of a new 75 ton container series and receive 2 1/4% of the revenue of that series. AEPI will not own an equity interest in Holtec and Holtec is not and will not become an affiliate of AEPI.

Finally, AEPI proposes to invest up to \$5 million, from time-to-time through December 31, 2002, to acquire an interest as a limited partner ("Limited Partner") in the EnviroTech Partnership, which will represent not more than 9.9% of the interests of all the Limited Partners. The EnviroTech Partnership is an investment pool being formed to invest in companies commercializing electrotechnologies and renewable energy technologies that promote

environmental and economic responsibility (each, "Portfolio Companies"). The formation of the EnviroTech Partnership is being coordinated by the Edison Electric Institute ("EEI"), a non-profit industry-wide membership organization comprised of electric utility companies throughout the United States. The Limited Partners will be EEI member companies and their affiliates, subsidiaries, parent holding companies or qualified pension or profit-sharing plans sponsored by such companies.

The term of the EnviroTech Partnership shall be for 10 years from the date of the Partnership Agreement, subject to extension for up to two years upon agreement of the general partner and Limited Partners holding 66 2/3% of the combined limited partnership interests. The Partnership Agreement provides that, not later than the date of becoming a Limited Partner of the EnviroTech Partnership, each Limited Partner shall contribute to the capital of the EnviroTech Partnership up to 10% of its capital commitment. The balance shall be due from time-to-time through the seventh anniversary of the final closing in installments of not less than 5% nor more than 25%.

Subject to certain limitations set forth in the Partnership Agreement, the management, operation, and implementation of policy of the EnviroTech Partnership will be vested exclusively in the general partner, which will be Advent International Limited Partnership ("General Partner"), whose own general partner is Advent International Corporation ("AIC"). AIC is a venture capital investment firm managing investments in the energy and environmental sectors. Among other powers, the General Partner shall have discretion to invest the partnership's funds in accordance with investment guidelines. The investment guidelines set forth criteria on approved types of technologies, size of investment, and portfolio diversification. Among other limitations on investment activities, the General Partner may not cause the EnviroTech Partnership to invest: (1) more than 7.5% of the total capital commitments in any single Portfolio Company; (2) more than 5% of the total capital commitments in securities of Portfolio Companies that are readily tradeable on established securities markets; or (3) invest in hostile takeover transactions or in highly leveraged buy-outs.

Under the terms of the Partnership Agreement, in consideration of its services to the EnviroTech Partnership, the General Partner will be paid an

annual management fee equal to 2 1/2% of the total amount of the capital commitments of the partners through the first 6 years, thereafter declining by 1/4 of 1% on each anniversary to 1.5% commencing on the 9th anniversary date. In addition, the General Partner shall be entitled to reimbursement for all reasonable expenses incurred in the organization of the EnviroTech Partnership up to \$195,000, and for other third party expenses incurred on behalf of the EnviroTech Partnership.

All EnviroTech Partnership income and losses, including income and losses deemed to have been realized when securities are distributed in kind, will generally be allocated 80% to and among the Limited Partners and 20% to the General Partner. 100% of all cash distributions to the partners shall be made first to the Limited Partners until such time as the Limited Partners shall have received aggregate distributions equal to the aggregate of their respective capital contributions, and thereafter 20% to the General Partner and 80% to the Limited Partners. Distributions in kind of the securities of Portfolio Companies that are listed on, or otherwise traded in, a recognized over-the-counter or unlisted securities market may be made at the option of the General Partner. However, AEPI will attempt in good faith to divest itself of any such Portfolio Company securities received as a distribution in kind as soon as practical, but in no event later than one year from the date of their receipt.

#### The Southern Company (70-8505)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12 of the Act and rules 43, 45 and 54 thereunder.

Southern proposes to organize and acquire all of the common stock of a new subsidiary to be named Mobile Energy Services Company, Inc. ("Mobile Energy"). Through Mobile Energy, Southern proposes to purchase the energy and recovery complex ("Energy Complex") at Scott Paper Company's Mobile, Alabama, pulp and paper mill ("Mill"). Upon the acquisition of the Energy Complex, Mobile Energy will become an "electric utility company" within the meaning of section 2(a)(3) of the Act.

The Energy Complex consists of three turbine generators with an aggregate rated capacity of approximately 105 MW, three power boilers, two recovery boilers, and various ancillary facilities. The Energy Complex provides

approximately 100% and 98%, respectively, of the steam and electric requirements of the Mill.

More than 80% of the fuel requirements of the Energy Complex are met by waste streams ("black liquor," biomass and sludge) of the Mill operations. Supplemental fuel needs are met with coal and natural gas. Through existing electrical interconnections with the Mill and Energy Complex, Alabama Power provides back-up and supplemental electric service.

Mobile Energy proposes to purchase the Energy Complex for \$350 million. A portion of the consideration paid would be in the form of the assumption by Mobile Energy of Scott Paper Company's ("Scott") obligations under various agreements relating to certain outstanding tax exempt industrial development bonds, due 2019 ("Tax Exempt Bonds") issued by the Industrial Development Board of Mobile, Alabama ("Board"), in 1985, in connection with the financing of certain solid waste disposal facilities. The total financed costs of the proposed acquisition will not exceed \$420 million, which includes the purchase price, the cost of certain improvements that Mobile Energy will make to the Energy Complex, closing costs and amounts needed for working capital and as cash reserves to satisfy the requirements of lenders.

The financed costs will be provided as follows: (i) By equity investments by Southern in Mobile Energy in an aggregate amount not to exceed \$105 million, in the form of purchases of all of Mobile Energy's authorized shares of common stock and cash capital contributions; (ii) by Mobile Energy's assumption of Scott's obligations with respect to \$85 million aggregate principal amount of Tax Exempt Bonds; and (iii) by the issuance of up to \$230 million aggregate principal amount of notes ("Notes") to one more financial institutions in a private placement or to one or more underwriters for resale to qualified institutional buyers. Closing on the sale of the Notes is anticipated to occur in the first or second quarter of 1995. Southern proposes to advance up to \$190 million to Mobile Energy in the form of a non-interest bearing interim loan, which would be repaid from the proceeds of the Notes.

The Tax Exempt Bonds do not have any scheduled payments of principal prior to maturity in 2019. The Tax Exempt Bonds currently bear interest at a rate which is reset weekly. The bond holders have the right to tender their Tax Exempt Bonds for repurchase upon seven days notice. If Tax Exempt Bonds are so tendered, the remarketing agent

offers them for resale. To secure and assure liquidity for these arrangements, Scott has delivered direct-pay letters of credit, backed by reimbursement agreements between Scott and the issuing banks, in the full amount of the outstanding Tax Exempt Bonds, plus a portion of the interest thereon.

At closing, Mobile Energy will assume Scott's obligations under the Tax Exempt Bond lease and agree to pay all of Scott's obligations under the existing reimbursement agreements. Southern proposes to guaranty Mobile Energy's obligations. Notwithstanding the foregoing, Scott will remain directly and primarily liable under the Tax Exempt Bond lease and the reimbursement agreements. Mobile Energy is obligated to cause Scott to be discharged from all liability under the Tax Exempt Bond lease and reimbursement agreements not later than 9 months after closing. If Mobile Energy should fail to take action that would discharge Scott under these agreements, Scott would have the right to draw down on the Southern guaranty and redeem the Tax Exempt Bonds in full.

Mobile Energy requests authority to exercise an option in the Tax Exempt Bond documents to convert the Tax Exempt Bonds to a fixed rate through maturity, or, alternatively, to enter into arrangements with the Board, pursuant to which the Board would issue new fixed rate bonds in an aggregate principal amount not to exceed \$85 million and use the proceeds thereof to redeem the existing Tax Exempt Bonds. In either case, it is proposed that the fixed rate on the converted Tax Exempt Bonds or new bonds would be no greater than 8½%. Upon conversion of the Tax Exempt Bonds or issuance of new bonds, the existing letters of credit and reimbursement obligations would be released.

It is proposed that the Notes would have maturities of from 16 to 22 years from the date of issuance and would bear interest at a fixed rate not to exceed the sum of the yield to maturity of an actively traded U.S. Treasury bond with a maturity equal to the average life of the Notes (proposed to be from 13 to 15 years) plus 3¾%. Southern has requested authority to provide a guaranty to the holders of the Notes in any amount of up to \$40 million in lieu of part or all of any cash funded debt service and/or working capital reserve account balances that may be required under the terms of the Note documents. Southern states that having the flexibility to provide a guaranty would enable Mobile Energy to reduce the amount of Notes sold, thereby reducing interest expense.

The obligations of Mobile Energy under the Tax Exempt Bond documents and the Notes would be secured by the assets and properties of Mobile Energy, including the collateral assignment of Mobile Energy's rights under three separate 25-year energy services agreements with Scott pursuant to which Mobile Energy will sell electricity, steam, and black liquor processing services to Scott. The three agreements are each with Scott in its capacity as owner of the pulp mill, the tissue mill, and the paper mill, which are the three components of the Mill. Separate agreements will be executed because Scott has already announced its agreement to sell its paper mill to an unaffiliated third party, and may in the future offer for sale either or both of the tissue mill and pulp mill.

Mobile Energy proposes to enter into two separate interest rate swap agreements at closing for the purpose of hedging against adverse movements in long-term interest rates between closing and the date (not earlier than six months after closing) on which the Tax Exempt Bonds are converted to fixed rate bonds or redeemed from the proceeds of new tax exempt bonds and the date (not later than June 30, 1995) on which the Notes are sold. The term of each swap and their respective amortization schedules would match the anticipated maturity and amortization of the converted or new tax exempt bonds and the Notes. Southern proposes to guaranty absolutely and unconditionally Mobile Energy's obligations under the interest rate swap agreements.

Under the terms of the acquisition documents, Mobile Energy and Scott will agree to indemnify each other with respect to environmental claims relating to the Energy Complex and each of the three mills to the extent such claims arise after closing. Southern proposes to guaranty uninsured claims against Mobile Energy under the terms of the environmental indemnities in an aggregate amount not to exceed \$20 million, as escalated for inflation.

SEI will enter into an agreement with Mobile Energy pursuant to which SEI will operate and maintain the Energy Complex at cost, as determined in accordance with rules 90 and 91. At closing on the purchase of the Energy Complex, SEI will hire a majority of the approximately 130 current employees of Scott who are dedicated to the Energy Complex operations. These employees will remain dedicated to the Energy Complex.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-28543 Filed 11-17-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34966; File No. SR-NASD-94-56]

**Self-Regulatory Organizations;  
National Association of Securities  
Dealers, Inc.; Notice of Filing of  
Proposed Rule Change Relating to the  
Three Business Day Settlement of  
Securities Transactions**

November 10, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on October 12, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by the NASD. On November 9, 1994, the NASD filed with the Commission Amendment No. 1, which is incorporated in the description of Items I, II, and III.<sup>2</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's  
Statement of the Terms of Substance of  
the Proposed Rule Change**

The NASD is proposing to amend Sections 5, 6, 12, 46, 64, and 65 of the Uniform Practice Code ("UPC") and Sections 1 and 26 of the Rules of Fair Practice ("RFP") to implement three business day ("T+3") settlement for securities transactions.

**II. Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the

most significant aspects of such statements.

**(A) Self-Regulatory Organization's  
Statement of the Purpose of, and  
Statutory Basis for, the Proposed Rule  
Change**

The NASD has determined that the following amendments to the UPC and the RFP are necessary in order to conform the NASD's rules to the T+3 settlement cycle mandated by Rule 15c6-1.<sup>3</sup>

**Uniform Practice Code**

**Sections 5 and 6**

Sections 5 and 6 of the UPC prescribe the formula for establishing ex-dates for securities following dividends or other distributions.<sup>4</sup> The proposed rule change will shorten all the time frames contained in these sections by two business days.

**Section 12**

Section 12 prescribes delivery dates for various transaction circumstances. Subsection 12(b) currently states that for a "regular way" transaction delivery shall be made on, but not before, the fifth business day following the trade date. The proposed rule change will shorten the delivery requirement to on, but not before, the third business day following the trade date. In addition, the proposed rule change will provide that in "seller's option" transactions delivery may be made by the seller on any business day after the third business day, rather than the fifth business day, following the trade date.

**Section 46**

Section 46 currently requires that interest to be added to the prices of interest-paying securities be calculated up to but not including the fifth business day following the date of the transaction. The proposed rule change will shorten the time to the third business day.

**Section 64**

Subsection 64(a)(3) currently requires members accepting an order whereby payment or delivery is to be made to or

by an agent of the customer to deliver a confirmation no later than one day after the trade date ("T+1"). The proposed rule change will shorten this time limit to trade date ("T+0"). The NASD believes that this change will result in nearly universal utilization of interactive electronic confirmation delivery systems.

Subsection 64(a)(4) currently requires that the customer in such a transaction must agree to furnish instructions to the agent no later than "T+4" if the customer is buying on a receipt versus payment basis or T+3 if the customer is selling on a delivery versus payment basis. The proposed rule change will shorten the time period for furnishing such instructions to T+1 for both buying and selling customers.

**Section 65**

The NASD also is proposing amendments to UPC Section 65 which sets forth the procedures for the transfer of customer accounts from one broker-dealer ("carrying member") to another broker-dealer ("receiving member"). The proposed rule change for Section 65 was developed in conjunction with the New York Stock Exchange, National Securities Clearing Corporation ("NSCC"), and the SIA Customer Account Division. Under the proposed language of Section 65, upon receipt from the customer of a signed account transfer instructions a receiving member must immediately submit the transfer instructions to the carrying member. The proposal will reduce from five to three business days the timeframe for the carrying member to either validate or take exception to the transfer instructions for all accounts including Retirement Plan Accounts for which the timeframe for validating or taking exception to transfer instructions currently is ten days. The proposal will require the completion of all transfers be accomplished in four rather than five business days. The Proposal also will (1) more clearly define the reasons why the carrying member may take exception to account transfer instructions; (2) require the use of an automated facility for the transfer of mutual fund positions and residual credits when both the carrying and the receiving members are participants in a registered clearing agency which automated facilities for such transfers; (3) set forth timeframes for resolution of claims; (4) require that partial transfers be processed through automated facilities of a registered clearing agency; and (5) require that members transfer residual credit balances within ten business days after accrual for a six month period.

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Division of Market Regulation, Over-the-Counter Regulation, Commission (November 8, 1994).

<sup>3</sup> On October 6, 1993, the Commission adopted Rule 15c6-1 under the Act, which establishes three business days after trade date ("T+3") instead of five business days ("T+5") as the standard settlement time frame for most broker-dealer transactions. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891. By Commission order, the rule becomes effective June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994).

<sup>4</sup> The ex-date indicates the interval between the announcement and payment of a distribution during which time an investor who purchases shares is not entitled to the distribution.

On September 2, 1994, the Commission approved the NYSE's proposed rule change to implement corresponding changes to the NYSE's procedures for transferring customer accounts.<sup>5</sup> The NYSE amendments relating to the automated transfer of mutual fund positions and residual credit processing become effective 180 days from approval (*i.e.*, on March 3, 1995) while all other provisions become effective 90 days from approval (*i.e.*, on December 2, 1994). The NASD believes that it is in the best interests of the public for the NASD's amendments to its customer account transfer procedures to become effective simultaneously with the NYSE's amendments.<sup>6</sup> The NASD therefore requests that Sections 65(m)(2) and 65(m)(3), relating to automated transfer of mutual fund positions and residual credit processing, be effective on March 3, 1995, and that all other provisions of Section 65 be effective on December 2, 1994.

#### Rules of Fair Practice

##### Article III, Section 1

The Prompt Receipt and Delivery Interpretation of the Board of Governors currently requires a member to make an affirmative determination that the customer owns the security and will deliver it in good deliverable form within five business days of the execution of an order in connection with a long sale. The interpretation also states that to satisfy the requests for an "affirmative determination," a member must note on the order ticket at the time of the order the customer's ability to deliver the securities within five business days. The proposed rule change will change these time limits from five business days to three business days.

##### Article III, Section 26(m)(1)

Article III, Section 26(m)(1) requires members to transmit payments received from customers for the purchase of investment company shares to the payees by the fifth business day after receipt of such customers' purchase orders or one business day following receipt of customers' payments, whichever is later. The proposed rule change will shorten the five business day transmittal requirement to three business days and will leave the one day alternative unchanged.

The NASD has agreed to an implementation plan for transition to a T+3 settlement cycle proposed by the

NSCC for early June 1995.<sup>7</sup> The NASD proposes that the proposed rule change (other than Section 65, as discussed above) be effective on June 7, 1995, the day the NSCC transitional settlement plan is scheduled to be completed.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)<sup>8</sup> of the Act which requires that the rules of the NASD be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest in that the proposed rule change will implement the T+3 settlement cycle mandated by Rule 15c6-1.

##### (B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change is intended to implement the transition to a three day settlement cycle specified in Rule 15c6-1, to be effective June 7, 1995, which the Commission adopted in furtherance of the purposes of the Act, as amended. Therefore, to the extent the basis for the adoption of rule 15c6-1 remains unchanged, the NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

##### (C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

<sup>7</sup> The NSCC plan is to double up settlement for two trade dates in order to move from T+5 to T+4 and then repeat the process to move from T+4 to T+3. Thus, for trade date Friday, June 2, trades will settle on the following Friday, June 9 (T+5), and for trade date Monday, June 5, trades also will settle on Friday, June 9 (T+4). The same doubled up settlement will be used for trade dates Tuesday, June 6 and Wednesday, June 7, which will both have a settlement date of Monday, June 12.

<sup>8</sup> 15 U.S.C. § 78o-3.

organization consents, the Commission will:

A. By order approve such proposed rule change or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-94-56 and should be submitted by December 9, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-28494 Filed 11-17-94; 8:45 am]

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[Release No. 34-34967; File Nos. SR-NYSE-94-23; SR-NYSE-94-24]

#### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Examination Specifications for the General Securities Sales Supervisor (Series 8) Examination, and the Corresponding Content Outline

November 10, 1994.

#### I. Introduction

On June 28, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> proposed rule

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> 17 CFR § 240.19b-4 (1994).

<sup>5</sup> Securities Exchange Act Release No. 34633 (September 2, 1994), 59 FR 46872.

<sup>6</sup> *Supra* note 2.

changes (File Nos. SR-NYSE-94-23 and SR-NYSE-94-24) to revise the General Securities Sales Supervisor (Series 8) Examination Specifications and the corresponding Content Outline.

The proposed rule changes were published for comment in Securities Exchange Act Release Nos. 34335 (July 8, 1994), 59 FR 35961 (July 14, 1994); and 34336 (July 8, 1994), 59 FR 35962 (July 14, 1994). No comments were received on the proposals. This order approves the proposed rule changes contingent upon the filing of the revised Examination Specifications and Content Outline by other appropriate self-regulatory organizations ("SROs"), and approval of those filings by the Commission.

## II. Description of the Proposal

The General Securities Sales Supervisor ("Series 8") Examination is an industry-wide qualification examination for securities sales supervisors. The Series 8 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the supervision of general securities branch offices (i.e., branch office managers) and of general securities registered representatives. The Series 8 examination tests a candidate's knowledge of securities industry rules and regulations and certain statutory provisions applicable to general securities sales supervision. The Series 8 Content Outline details the subject coverage and question allocation of the examination. The Examination Specifications detail the areas covered by the examination and break down the number of examination questions culled from each area.

Revision of the Series 8 Examination, Examination Specifications, and Content Outline was recently undertaken by an industry committee composed of representatives from SROs (the NYSE, the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers and the Philadelphia Stock Exchange) and representatives from broker-dealers, including branch office managers, compliance personnel and corporate executives, in order to update the examination in view of changes in relevant laws, rules and regulations, the development of new products, and to reflect various changes in industry practices. The committee reviewed the examination specifications, content areas and item bank and developed some new questions in new areas.

The revised examination continues to cover the areas of knowledge required to supervise sales activities in securities, however, the focus of the content of the examination has been shifted to concentrate more closely on supervisory duties. Accordingly, certain questions have been deleted from the examination which deal with routine calculations and basic product knowledge and questions on new federal and SRO rules and regulations have been incorporated into the exam, as well as questions on new products, supervision and changes in industry practices. The revised Examination Specifications and Content Outline reflect the revised content of the examination. The examination will remain a six-hour, two-part, 200 question examination.

The Commission anticipates that the other appropriate SRO participants also will file the revised Specifications and Content Outline for approval by the Commission. The NYSE, and these other SROs, may use the revised Examination, Specifications and Content Outline after the Commission has approved the proposed rule changes of the other appropriate SRO participants.

## III. Discussion

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) and 6(c)(3)(B) of the Act.<sup>3</sup> Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and may require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission believes that revising the Series 8 Examination, Specifications and Content Outline should help to ensure that only those securities sales supervisors with a comprehensive knowledge of current Exchange rules, as well as an

understanding of the Act, will be able to supervise general securities branch offices and registered representatives. The Commission believes that the revised areas covered by the Examination, Specifications and Content Outline are appropriate subject matters and include a sufficiently broad range of topics to ensure an appropriate level of expertise by supervisors. Additionally, the revised examination tests relevant subject matters in view of changes in applicable laws, rules, regulations, products, and industry practices. By ensuring this requisite level of knowledge, the NYSE can remain confident that securities sales supervisors have demonstrated an acceptable level of securities knowledge to carry out their responsibilities.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

## IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> that the proposed rule changes (File Nos. SR-NYSE-94-23 and SR-NYSE-94-24) are approved contingent upon the filing of the Examination Specifications and Content Outline by the other appropriate SROs and the approval of those filings by the Commission.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-28495 Filed 11-17-94; 8:45 am]  
BILLING CODE 8010-01-M

[Release No. 34-34968; File No. SR-Amex-94-23]

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc., Relating to Membership Structure and Requirements.

November 10, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on July 25, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change and Amendment No. 1 to the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On October 17,

<sup>3</sup> 15 U.S.C. § 78s(b)(2) (1988).

<sup>5</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>4</sup> 15 U.S.C. § 78f(b)(5) and (c)(3)(B) (1988).

1994 and November 2, 1994, the Exchange submitted to the Commission Amendments No. 2 and No. 3 to the proposed rule change in order to make technical corrections to the original filing.<sup>1</sup> On November 10, 1994, the Exchange submitted Amendment No. 4 to the proposed rule change to clarify certain aspects of its proposal.<sup>2</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing certain revisions to its Constitution, Rules and Membership Lease Plan regarding membership structure and requirements. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

#### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

##### **1. Purpose**

##### **Background**

The Exchange Member Ownership Issues Committee was established in June of 1992 to examine the need for changes and revisions in the Exchange's membership structure and requirements. Following an extensive review, the Committee recommended certain changes in order to update the membership structure and respond to the expressed needs of the membership.

These changes, which have been approved by the Exchange's Board of Governors and membership, are described below.

##### **Seat Ownership**

Currently, each of the 661 regular memberships and 203 options principal memberships are held in the name of an individual member.<sup>3</sup> Member firms and member corporations may beneficially own these memberships by designating an individual (typically a general partner or employee of a member firm or an officer or employee of a member corporation) nominally to own the seat in their behalf. This is accomplished by either using a lease<sup>4</sup> or an a-b-c agreement.<sup>5</sup> In the case of a lease, a member organization must also place the lease in the name of an individual nominee as lessor.

Individuals are not permitted to own more than one seat. Member organizations, on the other hand, may own multiple seats beneficially, but each seat must be nominally owned by an individual member.

The Exchange proposes to eliminate the requirement that seats be individually owned. The Amex believes that this requirement is outdated and not responsive to the needs of the member community. Several other exchanges permit organizations, as well as individuals, to own memberships (e.g., the Chicago Board Options Exchange ("CBOE"), the New York Futures Exchange and the Pacific Stock Exchange ("PSE")).

Under the proposal, an organization would be able to be both legal and beneficial owner of one or more

memberships. The organization would be able to lease a seat to a lessee or to designate an individual as nominee to "operate" the seat. As a general matter, nominees (like lessees) would be deemed to be members of the Exchange and would be subject to all of the obligations and enjoy all the privileges of membership under the Exchange Constitution and Rules, except (1) for purposes of participating in any distribution of Exchange assets or funds upon liquidation, dissolution or winding up of the affairs of the Exchange and (2) ultimate control of the membership would rest with the organization owner.<sup>6</sup> The a-b-c agreement would no longer be required. It would be replaced with another document to authorize the nominee to act on the member organization's behalf in all Exchange matters and to provide that the member organization is responsible for all the nominee's Exchange-related obligations.

The proposal would also permit both individuals and organizations to own multiple memberships. Individuals would be able to lease their additional seats, or to designate nominees to "operate" the seats and act as their employees.

A number of members have indicated that they would be interested in acquiring more than one membership. The Exchange finds no compelling reason to continue to prohibit multiple ownership of memberships. In this regard, it should be noted that the CBOE, the PSE, the Philadelphia Stock Exchange ("Phlx") and virtually all commodities exchanges permit multiple ownership.

##### **Leasing**

Currently, both the lessor and the lessee of a leased seat must be individuals. Because, under the proposal, organizations would be permitted to own seats directly, as well as beneficially, the member organization may be the lessor. Such member organization would not be required to designate a nominee as the lessor on the seat.

##### **Claims Procedure**

Under the current rules, no member may sell or transfer his membership unless he does so pursuant to established Exchange procedures. All transfers must be posted on the Exchange Bulletin Board and published in the *Weekly Bulletin* for at least seven days. During this time, other members

<sup>1</sup> See letters from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated October 14, 1994 ("Amendment No. 2") and October 31, 1994 ("Amendment No. 3").

<sup>2</sup> See letter from Linda Tarr, Special Counsel, Legal & Regulatory Policy Division, Amex, to Glen Barrentine, Senior Counsel, Division of Market Regulation, SEC, dated November 9, 1994 ("Amendment No. 4").

<sup>3</sup> According to the Amex, both regular and options principal members are exchange members as defined in Section 3(a)(3) of the Act. A regular member may execute transactions in both equities and derivatives. In contrast, an options principal member is limited to trading as principal in options and other derivative products. Telephone conversation between Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, and Beth Stekler, Attorney, Division of Market Regulation, on October 13, 1994. For further discussion of types of memberships, see Art. IV, Sec. 1 of the Amex Constitution.

<sup>4</sup> As noted below, the lease must be executed by the nominal seat owner, rather than the member organization with which such individual is associated and which is the beneficial owner of the membership.

<sup>5</sup> An a-b-c agreement is an arrangement between the individual who nominally owns a seat and the member organization with which such individual is associated and which is the beneficial owner of the membership. Upon termination of the a-b-c agreement, the individual must either (1) retain the membership and pay the member organization the amount necessary to purchase another membership; (2) sell the membership with the proceeds paid over to the member organization; or (3) transfer the membership to a person designated by the member organization.

<sup>6</sup> As discussed below, see *infra* note 11 and accompanying text, the owner would retain the right to vote seats held by nominees and certain lessees.

and member organizations must file their claims against the seat with the Exchange. The same procedures are used for intra-firm transfers. Before the seat can be transferred to another employee in the firm, the firm is required to satisfy any outstanding claims.

Basically, the same transfer and claims procedures would be utilized under the new membership structure. In addition, the designation of a nominee by a seat owner would be deemed to be a transfer, and the posting and claims procedures would apply.

#### *Subordination of Membership to Trading Losses and Debts*

Currently, all memberships are subordinated to (i.e., "stand behind") the trades of the member in whose name the seat is held. In the case of a leased seat, the lessor's seat is at risk for his lessee's trading losses and other debts incurred in connection with membership. In the case of seats held pursuant to a-b-c agreements, member organizations are responsible for obligations that their a-b-c seatholders incur.<sup>7</sup>

The above requirements would remain the same under the proposal. If an individual or organization owns multiple memberships that are held subject to one or more leases, only the seat used by a given lessee would stand behind that lessee's trades. If, however, an individual or organization owns multiple memberships as to which nominees have been designated, all of the owner's seats would stand behind the trades of any nominee.<sup>8</sup>

#### *Fees*

Currently, when a seat is sold, the initiation fee is \$2,500 for both a regular and options principal membership. The initiation fee on a nominal transfer (i.e., within a firm pursuant to an a-b-c agreement)<sup>9</sup> is \$2,500 for a regular membership and \$500 for an options principal membership. When a membership is transferred to a lessee, the initiation fee is \$1,500 for a regular membership and \$500 for an options principal membership. Dues for all members are \$750 per year. Floor

facilities fees are \$1,400 per year for active members.

The Exchange is proposing to change the fee structure in order to equalize fees between regular and options principal memberships.<sup>10</sup> The initiation fee of \$2,500 when a seat is sold would be retained for both regular and options principal memberships. However, all nominal transfers (i.e., intra-firm) and leases would be subject to a \$1,500 initiation fee. Changes in nominees would be deemed to be nominal transfers. According to the Exchange, it does not appear to be necessary or appropriate to retain the disparity in initiation fees for nominal and lease transfers of regular and options principal memberships in view of the fact that the administrative expenses (i.e., staff time and paperwork) attributable to the two types of membership are identical.

The Exchange, however, does not believe that it would be appropriate for the initiation fee requirement to deter members from taking advantage of the new alternatives that would be available in structuring ownership of Amex seats. Accordingly, for the ninety-day period after these changes become effective, no initiation fee would be charged for changes in membership ownership, except for bona fide sales and bona fide changes in leases or nominees. A \$250 processing fee would be imposed on transfers where no initiation fee is charged.

#### *Voting*

Currently, members subject to an a-b-c agreement sign an irrevocable proxy giving their votes to their member organizations. The organization then designates an individual (typically an employee) who is authorized to vote on behalf of the membership. In the case of leased seats, the vote is negotiable between the lessor and lessee.

Under the new rules, organizations would be entitled to vote all of the memberships that they own (and do not lease out) and would have to designate an individual who is authorized to vote on their behalf. Individuals who own more than one seat would be able to vote on behalf of the seat that they are actively using, as well as the seats of their employees/nominees. With respect to leased seats, the vote would still be negotiable between lessor and lessee. There would be a specific box on the lease itself on which the parties would indicate who is authorized to vote.<sup>11</sup>

<sup>10</sup> This proposal does not affect any change to annual dues or other fees.

<sup>11</sup> If no specification is made, the lessee would vote the seat.

#### *Gratuity Fund*

Currently, the Exchange Gratuity Fund ("Fund") provides that only families of regular members<sup>12</sup> receive the Gratuity Fund death benefit of \$100,000. To fund the death benefit, each regular member contributes \$152 to the Fund upon becoming a member and is assessed \$152 each time a fellow regular member dies (subject to reduction in the first assessment of the year to reflect income earned by the Fund in the previous year). In the case of leased seats, the lessor is considered the member for purposes of the Gratuity Fund.

A number of changes to the Gratuity Fund are proposed. These changes are intended to achieve two goals: to provide increased benefits and to close "loopholes" which could enable persons to become participants in the Gratuity Fund under circumstances which would be inappropriate.

Under the proposal, the benefit would be increased to \$125,000. The amount of each assessment would fluctuate since, as discussed below, the number of participants in the Fund would vary based on who is eligible at the time of a member's death. As is currently the case, participants would have to pay an initial assessment upon becoming a participant and an assessment each time an eligible individual dies. The first group of persons to become newly eligible for the Gratuity Fund upon the adoption of these changes would be required to pay an initial assessment of \$300.<sup>13</sup> Thereafter, persons who become eligible would be required to pay an initial assessment based on the number of participants in the Fund at that time.

Under the proposal, options principal members and both options principal and regular member lessees (and nominees) would be included in the Gratuity Fund,<sup>14</sup> in addition to regular members and some lessors.<sup>15</sup> In order for a lessor's beneficiaries to be eligible to receive a Gratuity Fund benefit, the

<sup>12</sup> See *supra*, note 3.

<sup>13</sup> The Gratuity Fund currently maintains a reserve of \$200,000, the amount necessary to pay two death benefits. If the benefit is increased, the reserve would be increased accordingly. The initial assessment of \$300 on new participants would allow the Fund to achieve this goal, and would place new participants on a par with existing participants who, of course, paid an initial assessment when they first became eligible to participate in the Fund.

<sup>14</sup> Options principal members, lessees and nominees would also be eligible to become trustees of the Gratuity Fund.

<sup>15</sup> Lessors (and owners of seats as to which nominees have been designated) could be included in the Gratuity Fund pursuant to the transition arrangements, see *infra* notes 23-27 and accompanying text, or based on their prior active status; see *infra* note 17 and accompanying text.

<sup>7</sup> The Amex has clarified that a member organization is responsible even if its a-b-c seatholder's obligations exceed the value of the seat. Telephone conversation between Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on November 4, 1994.

<sup>8</sup> Telephone conversation between Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, and Beth Stekler, Attorney, SEC, on September 16, 1994.

<sup>9</sup> See *supra*, note 5 and accompanying text.

lessor must have been "active" on the Floor for at least two continuous years during his career (but after the effective date of these changes). "Active" is defined as meeting all Exchange requirements to be active on the floor,<sup>16</sup> including passing any necessary examinations and being registered as, or associated with, a broker-dealer. Lessees and nominees would have to be currently active for their beneficiaries to receive a benefit. Individuals who own seats either would have to be currently active on the Floor or would have to have been active for at least two continuous years during their career (but after the effective date of these changes) in order for their beneficiaries to receive a Gratuity Fund benefit.

It should be noted that a person would not have to maintain the same status for the two-year period. For example, a person who is a lessee for one and a half years and who then buys the seat (or another seat) and remains on it for at least six months would satisfy the active requirement. In addition, a person may be off the seat for up to sixty consecutive days during the two-year period without being considered to have interrupted that period. Individuals would lose their right to participate in the Gratuity Fund based on prior active status if there should be any five-year period in which the person is not a lessor, lessee, nominee or seat owner.<sup>17</sup> Lessors who lose their prior active status would have to be active for another two continuous years in order to requalify for the Gratuity Fund. Members and nominees would either have to be currently active or active for another two continuous years in order to be eligible for the Gratuity Fund again.

Further, to be eligible for the Gratuity Fund, a person must pass a physical examination whenever he first becomes eligible for the Gratuity Fund (and again if he is becoming eligible for a second

time after having a non-participant for more than one year).

No member's beneficiaries would be entitled to receive more than one Gratuity Fund benefit upon the member's death by virtue of the deceased member's status as both lessor and lessee, or for any other reason. The family of a member who owns multiple memberships would be able to collect only one benefit. The member would be eligible on only one seat, and must designate that seat to the Exchange. The lessees or nominees of the other seats, of course, would be eligible on those seats.

The individuals who are nominee-lessors on behalf of member organizations would no longer be qualified for the Gratuity Fund under the proposed system (although, as discussed below, there would be a grandfather clause). This is because the member organization itself would be the lessor. Under the proposal, however, the individual who would have been named as lessor most likely would not qualify for the Gratuity Fund anyway, since member organizations typically named an upstairs executive as lessor and such person would not be "active" and may not have been "active" in the past, at least within the last five years.

Each membership would pay at least one assessment, regardless of whether the owner or a lessee or nominee qualifies for the Gratuity Fund.<sup>18</sup> In some instances, there would be one assessment per seat and on others two (i.e., when both lessor and lessee are qualified).

The trustees of the Gratuity Fund would have the authority to resolve disputes with respect to a person's eligibility to participate in the Fund.<sup>19</sup>

#### Pension Trusts

Currently, the Exchange does not permit ownership of seats by trusts.<sup>20</sup> The proposal would permit pension plans (generally comprised of trusts or custodial accounts, including Keoghs and Individual Retirement Accounts) of "active" members (as defined above) to acquire ownership of one or more seats

for investment purposes, and either to lease the seat or to designate a nominee to operate it.<sup>21</sup> The intent is to make this available only to pension trusts where the trust sponsor is an active member, or where the sponsor is a member organization and at least fifty percent (50%) of the pension trust beneficiaries are active members and/or Floor employees of the member organization. The trust itself would be the owner of the membership, and the trustee would have to become an approved person.<sup>22</sup> Only the nominee or lessee would be eligible for the Gratuity Fund, provided he or she is not already eligible for the Gratuity Fund with respect to another seat (e.g., as the owner of that seat). As is the case for other member organizations, the trust would be entitled to vote all of the seats that it owns (and does not lease out) and may designate who may vote on its behalf. If the seat is leased, the vote would be negotiable between the trust and the lessee.

#### Transition Arrangements

The proposal includes a grandfathering provision for the Gratuity Fund revisions.<sup>23</sup> All regular members and existing regular member lessors would be grandfathered with respect to the "active" requirement, that is, they would be deemed to have met it, even if they never were active for a two-year period. The grandfathering provision would include those lessors who are nominee-lessors on seats beneficially owned by an organization. A person grandfathered could lose his right to participate in the Gratuity Fund based on prior active status if there should be any five-year period in which he is not a lessor, lessee, nominee or seat owner.<sup>24</sup> As discussed above, for all non-grandfathered individuals, the "active" requirement must be satisfied on a prospective basis, after the effective date of these changes.

Individuals who currently own options principal memberships would have a one-time opportunity to "opt-in" or "opt-out" of the Gratuity Fund. A decision to "opt-out" would be irrevocable for the rest of the person's life (unless the person subsequently

<sup>16</sup> See Para. 9176 of the Amex Guide ("Membership Requirements and Admissions Procedures").

<sup>17</sup> The Amex has clarified that this provision would apply to a person who had satisfied the active requirement and thus was eligible for the Gratuity Fund based on prior status and who thereafter disposed of his membership. If, within five years of leaving the Exchange, such person becomes a lessor or other inactive seat owner, he would retain his right to participate in the Gratuity Fund. If, however, more than five years pass, such person would lose his prior active status and would have to requalify for the Gratuity Fund. A person who leaves the Exchange would not be eligible for the Gratuity Fund benefit during any period when he is not a lessor, lessee, nominee or seat owner. Telephone conversation between Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on October 14, 1994.

<sup>18</sup> The only exception to this would be in the case of an individual who is both the independent owner of and the user of a particular options principal membership and who "opts-out" of the Gratuity Fund under the transition provisions discussed below. For such a person's "opt-out" to be able to have any practical effect, his options principal seat would have to be exempt entirely from the obligation to pay assessments to the Gratuity Fund for so long as he remains the owner and user of that seat.

<sup>19</sup> For further discussion of rules governing trustees of the Gratuity Fund, see Art. IX of the Amex Constitution.

<sup>20</sup> Both the Phlx and the Chicago Mercantile Exchange permit pension trusts to own seats.

<sup>21</sup> The Exchange has been advised that the prohibited transaction provisions of the Employee Retirement Income Security Act and the Internal Revenue Code would preclude a member from being the nominee or lessee of the seat owned by his own pension trust.

<sup>22</sup> See Art. I, Sec. 3(g) of the Amex Constitution.

<sup>23</sup> For further discussion of the cut-off date for eligibility for the transition arrangements, see *infra* note 27 and accompanying text.

<sup>24</sup> See *supra*, note 17 and accompanying text.

buys a regular membership).<sup>25</sup> Options principal members who "opt-in" would be grandfathered with respect to the "active" requirement. Current lessees (both regular and options principal membership) would also have the right to "opt-out" of the Gratuity Fund, but such decisions would be effective only for the duration of their current lease, and new leases would require lessee participation in the Gratuity Fund. Lease renewals by the same two parties would not be considered to be new leases. Any new options principal member seat owner (other than an individual owner who previously chose to "opt-out" irrevocably as discussed above)<sup>26</sup> would be covered by the new rules.

While these grandfather provisions are appropriate in most cases, there was a concern that some people might attempt to rush through the "loopholes" referred to earlier by becoming lessors prior to the date these proposals finally become effective. Accordingly, notwithstanding the above provisions, an individual who was not a regular member or a regular member lessor as of the date of the Board meeting at which these proposals were approved by the Exchange Board of Governors (June 10, 1993), and subsequently became a regular member lessor after June 10, 1993, would not be grandfathered with respect to the two-year active requirement.<sup>27</sup> Similarly, an individual who was not a regular or options principal member or a regular or options principal lessor as of June 10, 1993, and subsequently became an options principal lessor after June 10, 1993, would not be allowed to "opt-in" to the Gratuity Fund. Such individuals would be covered by the new rules.

Most of the above described changes in membership structure would expand the choices available to persons and organizations in structuring their relationships. However, the proposed changes would eliminate the existing a-b-c agreement, and certain individuals and organizations may find that disruptive. Accordingly, a member organization would be permitted to continue to utilize its existing a-b-c agreements for so long as the respective

individual members remain on their seats.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Sections 6 (b) (3), 6 (b) (4) and 6 (b) (5) in particular in that it assures a fair representation of Exchange members in the administration of its affairs, provides for the equitable allocation of reasonable dues, fees and other charges among members, and is designed to prevent fraudulent and manipulative acts and practices.

### B. Self-Regulatory Organizations' Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the *Federal Register* or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that maybe withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at

the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submission should refer to File No. SR-Amex-94-23 and should be submitted by December 9, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 94-28496 Filed 11-17-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34956; International Series Release No. 747; File No. SR-NASD-92-7]

### Self-Regulatory Organizations; Notice of Amendment Nos. 1 and 2 to Proposed Rule Change by National Association of Securities Dealers, Inc., to Obtain Permanent Approval of the OTC Bulletin Board Service

November 9, 1994

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 6, 1994, and on November 8, 1994, the National Association of Securities Dealers ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment Nos. 1 and 2 to File No. SR-NASD-92-7, respectively,<sup>1</sup> as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Act, the NASD hereby proposes to amend its pending rule change (File No. SR-NASD-92-7) regarding permanent approval of the OTC Bulletin Board Service ("OTCBB" or "Service"). The amendment principally modifies Section 3 of the Service Rules, which defines the universe of securities eligible for quotation in the OTCBB. Specifically, the amendment would narrow the subset of foreign equity

<sup>1</sup> The proposed rule change as originally filed was published for public comment in Release No. 34-30766 (June 1, 1992), 57 FR 24281 (June 8, 1992). Amendment No. 2 clarifies some of the language used by the NASD in Amendment No. 1 to the proposal.

<sup>25</sup> If that person subsequently buys a different options principal membership, the decision to "opt-out" would apply to that seat as well. Telephone conversation between Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on October 14, 1994.

<sup>26</sup> See *supra*, note 25.

<sup>27</sup> However, in the event that such an individual dies during the period after June 10, 1993 but before the effective date of the changes, his beneficiaries would receive a Gratuity Fund benefit under existing requirements.

securities including those represented by American Depositary Receipts (hereinafter collectively referred to as "Foreign Equity Securities") that are OTCBB-eligible to those that are registered with the Commission pursuant to Section 12 of the Act. This requirement would be deemed effective as of the opening of business on July 5, 1994. Any Foreign Equity Security quoted in the OTCBB as of close of business on July 1, 1994 that is not registered pursuant to Section 12 of the Act could remain OTCBB-eligible provided that the issuer is exempt from the Section 12 registration pursuant to Rule 12g3-2(b) under the Act. Unregistered Foreign Equity Securities that are not exempt under Rule 12g3-2(b) as of December 30, 1994 would be deleted from the OTCBB by that date. Foreign Equity Securities that qualify for grandfathered status must continue to be exempt under Rule 12g3-2(b) and will remain subject to the twice-daily update limitation currently imposed on all OTCBB market makers in such issues. Finally, this amendment contains a technical change to Section 4 of the Service Rules to achieve consistent terminology as a result of the substantive changes to Section 3.

The amendatory language is set forth below: (New language is in *italics*; deleted language is bracketed.)

#### OTC Bulletin Board® Service Rules

##### OTCBB-Eligible Securities

Section 3. The following categories of securities shall be eligible for quotation in the Service:

- (a) (No Change); and
- (b) any foreign equity security [or] including those represented by American Depositary Receipts ([ADR] hereinafter collectively referred to as "Foreign Equity Securities") that is [not listed on Nasdaq or a registered national securities exchange in the U.S., except that foreign equity securities or ADRs that are (i) listed on one or more regional stock exchanges and (ii) do not qualify for dissemination of transaction reports via the Consolidated Tape shall be considered eligible.] registered with the Securities and Exchange Commission ("SEC") pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act"), listed on one or more regional stock exchanges in the U.S., and not qualified for dissemination of transaction reports via the facilities of the Consolidated Tape;
- (c) any Foreign Equity Security that is (i) registered with the SEC pursuant to Section 12 of the Exchange Act, and (ii) not listed on The Nasdaq Stock Market

or a registered national securities exchange in the U.S.; and

(d) any Foreign Equity Security that was quoted in the OTCBB as of July 1, 1994, and that is exempt from the registration requirements of Section 12 of the Exchange Act pursuant to Rule 12g3-2(b) [17 CFR 240.12g3-2(b)] thereunder, as of December 30, 1994; eligibility under this subsection (d) is maintained only as long as the affected foreign private issuer maintains its exemption from such registration requirements pursuant to Exchange Act Rule 12g3-2(b).

#### Requirements Applicable to Market Makers

Section 4(a)3. A priced bid and/or offer entered into the Service for a Foreign Equity Security [or ADR] eligible pursuant to Section 3(d) above shall be non-firm.<sup>2</sup>

<sup>2</sup> The non-firm or indicative nature of a priced entry in a Foreign Equity Security [or ADR issue] eligible pursuant to Section 3(d) above is specifically identified on the montage of market maker quotations accessible through the Nasdaq Workstation Service for this subset of OTCBB-eligible securities.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The NASD is proposing a clarifying amendment to its pending rule proposal that requests permanent approval of the OTCBB Service. The amendatory language does not affect the operational characteristics of the Service. Instead, it restricts the eligibility of unregistered Foreign Equity Securities for quotation in the Service. Retroactive to July 5, 1994, no Foreign Equity Security would be classified as OTCBB-eligible unless the issuer had registered the security with the Commission under Section 12

of the Act. Any unregistered Foreign Equity Security that had been admitted to the OTCBB on or after July 5th would be deleted no later than December 30, 1994. However, an exception will be provided for unregistered Foreign Equity Securities that were quoted in the OTCBB as of the close of business on July 1, 1994. These issues could remain eligible for inclusion in the Service provided that the issuer is exempt as of December 30, 1994, and continues to be exempt from the registration requirements under Section 12 of the Act, pursuant to Rule 12g3-2(b) thereunder. Any issue that does not meet this requirement for grandfathered status would be deleted from the OTCBB no later than December 30, 1994.

The inclusion of unregistered Foreign Equity Securities in the OTCBB has been a point of contention since the OTCBB was initially approved as a pilot program in the first half of 1990.<sup>2</sup> Indeed, this has been the principal factor preventing approval of the Service on a permanent basis. The substance of this amendment reflects an intermediate position designed to obtain permanent approval of the OTCBB in the near term.

###### 2. Statutory Basis

The NASD believes that this proposed rule change, as amended, is consistent with Sections 11A(a)(1), 15A(b) (6) and (11) of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly

<sup>2</sup> See Securities Exchange Act Release No. 27975-A (May 30, 1990), 55 FR 23161 (June 6, 1990). The Commission notes that the OTCBB currently is operating on a temporary pilot basis schedule to expire on December 31, 1994. See Securities Exchange Act Release No. 34766 (September 30, 1994), 59 FR 50947 (October 6, 1994) (order approving on a temporary basis File No. SR-NASD-94-52).

procedures for collecting and disseminating quotations. To the extent that certain unregistered Foreign Equity Securities will remain eligible for the Service on a grandfathered basis, the non-firm quotation information collected on these issues will be distributed electronically through commercial vendor channels. As such, the information will be accessible on desktop terminals and may assist retail investors and their brokers in entering orders in the affected securities. Likewise, the electronic capture of non-firm quotation information on these same issues will assist the NASD staff responsible for trading surveillance. Finally, if the modified eligibility criteria for OTCBB inclusion were proposed without a provision for grandfathered treatment, the NASD believes that investors and brokers would be disadvantaged by the elimination of many Foreign Equity Securities from the Service.

#### *B. Self-Regulatory Organizations Statement on Burden on Competition*

The NASD believes that the instant proposal will not create any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organizations Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Comments were neither solicited nor received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.<sup>3</sup>

<sup>3</sup> The Commission notes that the NASD has submitted to the Commission a letter extending the period for Commission action on File No. SR-NASD-92-07 through January 1, 1995. See letter from Michael J. Kulczak, Associate General Counsel, NASD, to Elizabeth L. Prout, Esq., Attorney, Commission, dated November 1, 1994. The Commission believes that this extension logically also would apply to Commission consideration of the present amendments to File No. SR-NASD-92-07.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 9, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-28497 Filed 11-17-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34955; File No. SR-MSRB-94-9]

#### **Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Reports of Sales or Purchases, and Procedures for Reporting Inter-dealer Transactions Pursuant to Rule G-14**

November 9, 1994.

#### **I. Introduction**

On June 20, 1994, the Municipal Securities Rulemaking Board ("MSRB" or "Board") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend Board rule G-14, concerning reports of sales or purchases, and procedures for reporting inter-dealer transactions (collectively, "the proposed rule change").<sup>1</sup> The proposed rule change

<sup>1</sup> 17 CFR 200.30-3(a)(12) (1993).

<sup>2</sup> In a recent letter to the Commission, the MSRB stated that it plans to start operation of the pilot transaction reporting system for trades occurring on and after January 1, 1995. This letter also outlines the MSRB's four-phase plan, of which the present filing reflects Phase I, for more contemporaneous reporting of all municipal securities transactions.

states that it is the duty of brokers, dealers and municipal securities dealers to report transactions in municipal securities to the Board or its designee, and describes procedures for reporting.

The proposed rule change was published for comment in Securities Exchange Act Release No. 34458 (July 28, 1994), 59 FR 39803 (August 4, 1994) ("Proposing Release"). The Commission received four comments on the proposal. For the reasons discussed below, the Commission has determined to approve the proposal.

#### **II. Description of the Proposal**

The purpose of the proposed rule change is to increase transparency in the municipal securities market in a cost-effective manner by collecting and disseminating information on inter-dealer transactions. Under the proposed rule change, aggregate data about market activity and certain volume and price information about frequently traded securities will be disseminated publicly to promote investor confidence in the market and its pricing mechanisms. In addition, all transaction information collected will be made available to regulatory agencies responsible for enforcement of Board rules as a means to assist in the inspection for compliance with and enforcement of Board rules.

The proposed rule change is a first step to increase transparency in the municipal securities market. After gaining experience with the collection and dissemination of inter-dealer transactions, the Board plans to add institutional and retail customer information, and to move toward the ultimate goal of making available transaction information that is both comprehensive and contemporaneous.

#### *A. The Pilot Program for Transaction Reporting*

In 1993, the Board announced its plan to undertake a pilot program to collect and publish information on transactions occurring in the inter-dealer market for municipal securities (the "pilot program"). The Board has designed the pilot program to take into account the distinctive aspects of the municipal securities market that distinguish it from the exchange-listed and Nasdaq markets.<sup>2</sup>

See letter from Robert H. Drysdale, Chairman, MSRB, to The Honorable Arthur Levitt, Chairman, SEC, dated November 3, 1994 ("MSRB November 1994 letter").

<sup>2</sup> In its filing with the Commission, the Board notes several distinguishing characteristics of the municipal securities market. First, there is a large number of outstanding municipal issues (approximately 1.2 million distinct, non-fungible

The pilot program will make information available in the form of a daily, public report containing volume and pricing information for the inter-dealer market ("daily report"). The issues that will be reported individually each day will be those that traded at or above a threshold number of times on the previous business day. Initially the threshold will be four trades per day. As trading in an issue increases, it will be reported; as an issue's trading frequency decreases, it will be replaced by others that are trading frequently. In this way, the daily report will reflect the ever-changing pattern of trading activity in the universe of some 1.2 million municipal securities. The pilot program also will make information on all inter-dealer trades in municipal securities available to the Commission and other regulatory agencies to assist in the inspection for compliance with and the enforcement of Board rules.

#### B. Requirement to Report

While there is an existing requirement for dealers to report their inter-dealer trades for comparison, there is no existing affirmative requirement for public reporting of municipal securities transactions. Currently, the Board's rule G-14 does not require the reporting of transactions in municipal securities, but does require that any such report represent a legitimate trade. The rule requires a dealer that distributes or publishes a report of a transaction in a municipal security to know or have reason to believe that the transaction was actually effected and to have no reason to believe that the transaction was fictitious or in furtherance of any fraudulent, misleading or deceptive purpose.

The proposed rule change would amend rule G-14 to impose a duty upon dealers to report inter-dealer transaction information to the Board or its designee. The proposal states that such information would be used to make public reports and would be provided to

the Commission, the NASD, and bank regulatory organizations charged with enforcing Board rules, *i.e.*, the Comptroller of the Currency in the case of national banks, the Board of Governors of the Federal Reserve System in the case of state member banks of the Federal Reserve System, and the Federal Deposit Insurance Corporation ("FDIC") in the case of other banks insured by the FDIC.

#### C. Reporting Procedures

Brokers, dealers and municipal securities dealers will report transactions under Rule G-14 Transaction Reporting Procedures, which are also part of the proposed rule change. The transaction reporting procedures designate the National Securities Clearing Corporation ("NSCC") as the Board's agent to receive transaction information.<sup>3</sup> Thus, the Board will receive information under the proposed procedures through NSCC.

Currently, pursuant to the Board's rule G-12(f)(i), dealers must use the facilities of a registered clearing agency to compare all inter-dealer transactions in securities with CUSIP numbers. Since NSCC and all other registered clearing agencies offering municipal securities comparison services are linked by automated interfaces, transactions may be submitted to NSCC by submitting them to any registered clearing agency. Accordingly, the proposed procedures state that dealers may provide transaction information to NSCC or to any other registered clearing agency linked with NSCC for the purpose of automated comparison. Dealers may submit transaction information directly or through an agent that is a member of the registered clearing agency. These proposed procedures are essentially the same as those existing under Board rule G-12(f)(i). Thus, under the proposed program, dealers will not have to submit transaction data to a separate reporting system and should not incur additional operational costs. Also under the proposed procedures, dealers must report the requisite transactions within

certain time frames so that they compare for next day comparison.

Pursuant to existing Board rule G-12(f)(i) for the comparison of transactions, and under the present proposal, the following data must be furnished to a registered clearing agency in connection with any inter-dealer municipal securities transaction:

- Identification of seller
- Identification of buyer
- Trade date
- CUSIP number of security traded
- Trade type (e.g., syndicate takedown, new issue, or regular way)
- Par value (quantity) traded
- Settlement date, if not "regular way"
- Price, in one of the following formats:
  - Dollar price of security;
  - "Final money" (total dollar amount of the transaction);
  - Yield or basis and concession, if any.<sup>4</sup>

With one exception, NSCC automated comparison procedures require both the purchasing and selling dealers to submit information about the trade. Thus, the proposed reporting procedures require transaction information to be submitted by both parties. For transactions involving the distribution of new issue securities from a syndicate manager to syndicate members, however, NSCC comparison procedures require only a submission from the syndicate manager. The proposed procedures allow for the same "one-sided" submission of information for public reporting.

#### D. Timing

In the current comparison cycle, dealers submit required information to a registered clearing agency by the evening of trade date ("T"). NSCC, as the central facilities provider for the comparison system, accepts this submitted data, compares the submissions of the parties on the right of T and reports the results back to the dealers on T+1. Trades that are successfully compared on T will be the basis of the daily report produced by the Board's proposed program. Accordingly, trades that are not successfully compared on the night of the trade will not be subject to reporting on T+1.<sup>5</sup> As

entities), with no core group of frequently, consistently traded issues. Also, most municipal securities purchases are made by "buy and hold" investors relatively quickly after issuance, so frequent trading in an issue generally occurs immediately after issuance and then subsides within a week to 10 days. Finally, firm two-sided quotations exist for very few municipal securities at any given time due to several disincentives for market making: (1) there is only a small "float" of securities available for trading; (2) the tax treatment of borrowing tax-exempt securities (along with small floats) effectively prevents short-sales, thereby limiting risk management mechanisms; and (3) the traditional "buy and hold" philosophy of purchasers does not provide the incentive or create the need for continuous two-sided quotations traditionally offered by market makers in equity securities.

<sup>3</sup> NSCC is a clearing agency registered with the Commission under Section 17A of the Act and is the central facility for automated comparison processing for inter-dealer municipal securities transactions. Automated comparison is the process by which each party to an inter-dealer trade ensures that its contra-party knows the terms of the trade and will be ready to settle, on those terms, on settlement date. In general, the automated comparison process requires each dealer in a transaction to submit information on a trade (e.g., price, quantity, contra-party) to a comparison system operated by a clearing agency registered with the Commission. This information is then matched ("compared") by computer in the comparison system and the results are reported back to each dealer.

<sup>4</sup> Currently, accrued interest is an optional data element for the purpose of the automated comparison process. However, accrued interest will be a mandatory submission for the purpose of transaction reporting pursuant to the Rule G-14 Transaction Reporting Procedures. This requirement is necessary for accurate computation of dollar price in certain circumstances.

<sup>5</sup> The Board determined to use data for compared trades rather than data for both compared and un-compared trades because compared data is more reliable than un-compared data. Reported un-compared data might cause the daily report to include erroneous prices or to duplicate trades. Un-compared submissions eventually are resolved as trades or mistakes. Those that are resolved as

an indication of the reliability of the data in the daily report, the percentage of submissions that were successfully compared ("comparison rate") will be shown in each day's report.

#### E. The Daily Report

The daily report will be provided to subscribers for public use by approximately 6:00 a.m. on T+1. This will make the data available prior to the beginning of trading activity. The daily report will be available both as a computer-readable file and as a printed report. The computer-readable file will be electronically disseminated by an automated interface between Board computers and those of subscribers or by magnetic tape delivered by a courier service.

The daily report will include aggregate information for each day of trade, as follows:

- (i) total par value traded;
- (ii) total number of compared transactions; and
- (iii) total number of issues traded (i.e., the number of different CUSIP numbers that were involved in compared transactions on that day).

In addition to the aggregate data, the daily report will contain price and volume information about certain municipal securities that were "frequently traded" on that day. The Board believes that it would be appropriate to report issue-specific information only if four or more transactions in the issue are reported as compared on a given day. Using this threshold and based on recent levels of market activity, the Board anticipates that the daily list of frequently traded issues normally will range between 80 to 350 issues, with an average of about 180 issues each day. The size and composition of the list obviously would vary from day to day, depending upon market activity in specific cases.

The information in the daily report about each "frequently traded" security will include:

- (i) the CUSIP number and security's description;
- (ii) the total number of transactions in the security and total volume traded;
- (iii) the highest and lowest prices of transactions in the security; and
- (iv) "average price" information, i.e., the number of transactions in the security involving par values between \$100,000 and \$1,000,000 inclusive, and the average price of those transactions.

The Board will provide a statement to be included in the report pointing out

trades will be entered in the transaction reporting database after T+1 and thus will be made available to the enforcement agencies.

that (a) the daily report represents only those inter-dealer transactions that have been submitted for comparison and that actually were compared on the previous day and (b) reported prices are affected by various factors such as transaction size. This statement is intended to ensure that readers unfamiliar with the municipal securities market do not misinterpret the daily report.

#### F. Price Computation

Municipal securities transactions are sometimes executed on a dollar price basis and sometimes executed on a yield basis. The Board has chosen to use dollar price as the uniform expression of "price" in the daily report to simplify reporting procedures. In cases where dollar price is submitted for comparison, that dollar price, as compared by the comparison system, will be used in the daily report. In certain cases the security "price" for the daily report will need to be computed from other data that has been submitted. For example, current procedures required for automated comparison allow the submission of par value and "final money" (total dollar amount of the transaction) to achieve comparison. The proposed Rule G-14 Transaction Reporting Procedures provide that the dealers will submit the amount of accrued interest in the trade to allow for computation of dollar price in these cases. The following formula will be used:

$$\text{Dollar price} = (\text{Final money} - \text{Accrued interest}) / \text{Par value}$$

For "when, as and if issued" trades submitted for comparison on a yield basis, final money will be computed and a dollar price similarly derived if a settlement date is known. For yield transactions whose settlement date is not known, an assumed settlement date will be used. The assumed settlement date will be 20 business days from the first trade date on which that issue is submitted for comparison. On the daily report, a note will be added to the trade information stating that an assumed settlement date was used to compute the dollar price in the trade and showing the date used. Once the actual settlement date is known to NSCC, it will be used and noted as such when the issue is next included on a daily report.

#### G. Fees and Costs

Subscription fees, estimated production costs for the daily report, and further technical details of the pilot program will be provided in a subsequent filing prior to beginning operation of the facility.

#### H. Surveillance and Enforcement Uses of Pilot Program Information

In addition to public reporting, the proposed rule change would make transaction data available to the regulatory organizations charged with enforcing Board rules. The transaction reporting pilot program will result in a centralized data base of trade information that should improve the efficiency and effectiveness of inspection for compliance with and enforcement of Board rules. All compared trades will be made available to these regulatory organizations, including those that compare after trade date and those not frequently traded. Comprehensive information will be made available, including identification of parties to each trade and the prices of all securities traded.

The information to be made available through the pilot program should enable enforcement agencies to identify transaction patterns to detect market manipulation and other anomalies, and should assist regulators in determining the market value of securities as they assess compliance with the Board's rule G-30 on fair and reasonable prices and commissions. The Proposing Release states that the Board is working with the NASD and the banking regulatory organizations to ensure that the pilot system's outputs will meet their requirements for surveillance of the municipal securities market and enforcement of the Board's rules.

As stated in the Proposing Release, the Board plans to evaluate expansion of the pilot program as experience is gained and comments on program operations are received from information users and the industry. The Board's first consideration will be how the daily report and surveillance mechanisms could be improved by including institutional customer transaction data and information on the time of trade. During this evaluation, the Board's goal will be not only to enhance the information contained in the daily report, but also to find cost-effective methods for providing even greater levels of transparency to the market, particularly with respect to customer transactions and the dissemination of transaction price information on a more contemporaneous basis.

#### III. Comment Letters Received

The Commission received four comment letters on the proposed rule change.<sup>6</sup> As discussed more fully below,

<sup>6</sup> Of these letters, three were submitted directly to the Commission. See letters from Douglas L. Kelly, Director—Law Compliance Division, A.G. Edwards & Sons, Inc., to Office of the Secretary, SEC, dated

two commenters voiced support for the MSRB initiative, one commenter recommended specific format elements for the information to be disseminated without voicing support or opposition to the overall proposal, and one commenter stated that it is very interested in participating in the MSRB pilot project, yet is concerned about the manner in which certain trades are to be counted.<sup>7</sup>

One commenter voiced its full support of the MSRB's Pilot Program concerning inter-dealer transactions in municipal securities, and stated that it looks forward to working with the Board and the Commission in examining the ramifications of the next phases of the MSRB's transparency plans (i.e., the creation of cost effective methods for providing greater transparency of customer transactions and the dissemination of transaction price information on a more contemporaneous basis).<sup>8</sup> Another commenter voiced its strong support for the MSRB initiative, and stated that it also would support any technically feasible acceleration of the timetable for subsequent phases of the MSRB's transparency plans.<sup>9</sup>

Two commenters made recommendations regarding particular elements of the proposal. First, one commenter believes it is important at this early stage of the MSRB initiative to ensure that securities listed on the NSCC's transaction reports will be identified in a way that is readable to the public (i.e. by using standardized securities descriptions, by sorting the reported information by state, and by displaying the information in plain

text).<sup>10</sup> The commenter also suggested that a separate field for each security be reserved to identify whether a security is insured.

The fourth commenter stated that any transaction occurring through a "brokers' broker" should be counted as one trade for the purposes of transaction reporting. The commenter believes that brokers' broker transactions are the same as dealer-to-dealer transactions for the purposes of transaction counting because in both cases there has been one decision to commit capital at the transaction price.<sup>11</sup>

In its response to the above letter, the MSRB first noted that brokers' brokers function in the market by executing "riskless" transactions between dealers.<sup>12</sup> The MSRB also confirmed that, when a brokers' broker arranges an exchange of securities at a given price between two dealers, the pilot system will count the exchange as two trades. Moreover, if two exchanges occur, the pilot system will reflect four trades, thereby meeting the four-trade threshold that triggers dissemination in the daily report. The MSRB stated that previously it had voiced concern that reporting transactions in issues that trade below the four-trade threshold might not provide a reliable indicator of market price. The letter stated that the Board, however, is not aware of any reason that the ultimate goal of reporting reliable market price indicators would be affected by reporting transactions that might not have been reported if effected directly between dealers. The Board further stated that, in many respects, it might be argued that transactions occurring through brokers' brokers represent particularly reliable indicators of inter-dealer prices.

Finally, the Board noted that the transaction reporting project is a pilot program and that it is likely to be changed or expanded as market participants gain experience with reporting a limited number of inter-

dealer transactions. According to the MSRB response letter, during the pilot period, the Board will consider whether the threshold is at its best setting and will be sensitive to any anomalies that might be discovered involving brokers' brokers.

#### IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Municipal Securities Rulemaking Board and, in particular, with the requirements of Section 15B.<sup>13</sup> Specifically, the Commission believes the proposal is consistent with the requirements of Section 15B(b)(2)(C) that the Board's rules be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.<sup>14</sup>

Regarding transparency in the municipal securities markets, a 1993 Staff Report by the Commission's Division of Market Regulation stated:

The Staff believes that the degree of transparency in the municipal securities market is not adequate, and should be increased to better inform investors in their dealings with broker-dealers and to make the market more efficient. . . . [T]he Staff believes that the Commission or the MSRB should take steps to increase the availability of real-time municipal information, to the fullest extent practicable, taking into account the cost of providing such information and its relative usefulness.<sup>15</sup>

The Commission believes the proposal is an important first step in reaching these objectives.<sup>16</sup> The Commission also believes the MSRB should continue to work toward increased transparency to better inform investors in their dealings with broker-dealers and to make the municipal

August 22, 1994 ("A.G. Edwards letter"); from Thomas W. Masterson, Chairman, Masterson Moreland Sauer Whisman, Inc., to Jonathan G. Katz, Secretary, SEC, dated August 24, 1994 ("Masterson letter"); and from R. Fenn Putnam, Chairman, Public Securities Association, to Secretary, SEC, dated September 9, 1994 ("PSA letter"). The fourth letter was submitted to the MSRB and forwarded to the Commission along with the Board's response. See letters from Peter C. Byram, Senior Vice President, Executive Director of Trading, J.J. Kenny Drake, Inc., to Mr. Christopher A. Taylor, Executive Director, MSRB, dated September 15, 1994 ("J.J. Kenny Drake Letter"); and from Christopher A. Taylor, Executive Director, MSRB, to Mr. Peter C. Byram, Senior Vice President, Executive Director of Trading, J.J. Kenny Drake, Inc., dated September 28, 1994 ("MSRB response letter").

<sup>7</sup> In its filing with the Commission, the MSRB discussed comment letters it had received in response to a May 1993 MSRB notice published in the June 1993 MSRB Reports, concerning the plan to increase transparency in the municipal securities market. For a detailed discussion of the letters received by the MSRB prior to filing the present proposed rule change with the Commission, see Proposing Release, 59 FR 39803.

<sup>8</sup> See PSA letter, *supra* note 6.

<sup>9</sup> See Masterson letter, *supra* note 6.

<sup>10</sup> See A.G. Edwards letter, *supra* note 6.

<sup>11</sup> See J.J. Kenny Drake letter, *supra* note 6.

<sup>12</sup> See MSRB response letter, *supra* note 6. In this letter, the MSRB also describes typical brokers' broker activity:

[A] brokers' broker may buy a security from one or more dealers and sell that same security to one or more dealers on a given day; however, the brokers' broker takes care to do this in a way that ensures all securities purchased are also sold on that same day. In a typical transaction, a brokers' broker might work with a dealer who wishes to sell a quantity of securities. The brokers' broker would disseminate a request for bids on this issue to the market. If the selling dealer desires to execute the sale at the highest bid to the brokers' broker, the sale will take place, with the brokers' broker accepting the high bid, buying the position from the selling dealer and selling the position to the purchasing dealer.

<sup>13</sup> 15 U.S.C. § 78f(b) (1988).

<sup>14</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>15</sup> SEC, Division of Market Regulation, *Staff Report on the Municipal Securities Market* (September 1993) ("Staff Report"), at 36.

<sup>16</sup> As noted above, the proposed rule change is intended to be a first step to increase transparency in the municipal securities market. After gaining experience with the collection and dissemination of inter-dealer transactions, the Board plans to continue implementing its four-phase initiative to add institutional and retail customer information, and to move toward the ultimate goal of making available transaction information that is both comprehensive and contemporaneous. The specific steps planned by the MSRB, along with a tentative schedule for the enhancements, are described in the MSRB November 1994 letter, *supra* note 1.

securities market more efficient. Finally, the Commission believes that, as the MSRB completes each of the four phases of its plan for increased transparency, including the first phase proposed in the present filing, the increased information available to oversight organizations and to the market participants as a whole should serve to better meet the objectives set forth in Section 15B(b)(2)(C) cited above.

The Commission believes the comment letters received both by the Commission and by the MSRB on the proposed pilot program evidence one of the several ways in which the proposed procedures should serve to a benefit the municipal securities markets. Specifically, publication of the proposal seems to have activated an important dialogue among market participants and the MSRB which should lead to beneficial evaluations of the types and forms of transaction information that may prove most useful to the public. Thus, the Commission believes the MSRB should continue to consider carefully all existing and future comments recommending changes in the types and formats of information to be disseminated. Comments on elements of the program that identify transaction information to be disseminated, including the threshold number of trades and the average price calculation band that trigger inclusion in the daily report, along with concerns regarding double-counting of brokers' brokers trades, should continue to be evaluated by the MSRB. This evaluation process should continue to prove useful as the MSRB initiates future phases of the transparency plans.

In considering comments on this and future transparency initiatives, the MSRB should continue to work toward publicly disseminating the maximum level of useful information to the public while ensuring that the information and manner in which it is presented is not misleading. In this regard, the Commission believes the MSRB should continue to consider all recommendations for standardized disclosures to be included in the daily report so that the disseminated information may be used most effectively by the public. Moreover, as increased transaction information becomes available to municipal securities information vendors, the Commission believes levels of demand for information, including demand by academics, should assist in formulating beneficial formats for its dissemination. Finally, the Commission expects the MSRB to consider all requests for accelerated initiation of future phases for market transparency.

The Commission believes the proposed distribution of municipal securities transaction information to oversight authorities also furthers the above cited Section 15B(b)(2)(C) objectives.<sup>17</sup> The creation of an integrated audit trail should provide valuable information for market surveillance and inspection purposes to the MSRB, the Commission, the NASD, and the relevant banking agencies. Specifically, the Commission believes that, as more market participants become subject to mandatory trade reporting requirements, the resulting integrated audit trail should be useful in municipal securities market surveillance efforts to detect and prevent fraudulent and manipulative acts and practices, and generally to protect investors and the public interest.<sup>18</sup> Finally, the Commission believes the proposed method of collecting and using information already made available to NSCC by market participants should be a particularly cost-effective method of achieving these goals during the first phase of the pilot system.

#### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-MSRB-94-09) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-28498 Filed 11-17-94; 8:45 am]

BILLING CODE 8010-01-M

<sup>17</sup> The Commission, however, is issuing this order provided that, before January 1, 1995, the MSRB provides the Commission with data concerning the hardware platform and software development to be used to produce the audit trail (and any necessary systems to produce the daily report or related public dissemination of information), along with assurances that the system has been tested adequately and has adequate capacity.

<sup>18</sup> The Commission staff previously has urged municipal securities regulators to work to create a cost-effective trade reporting system to provide the regulators with an integrated audit trail of municipal securities transactions, particularly because the audit trail would increase the NASD's ability to examine and enforce the existing customer protection rules of the Commission and the NASD. See Staff Report, *supra* note 15, at 37. In this regard, the Commission expects the Board to continue working with the NASD and the banking regulatory organizations to ensure that the pilot system's outputs will meet their requirements for surveillance of the municipal securities market and enforcement of the Board's rules. The Commission also believes the NASD should be the primary entity responsible for conducting market surveillance.

<sup>19</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>20</sup> 17 CFR 200.30-3(a)(12) (1991).

#### SMALL BUSINESS ADMINISTRATION

[Application No. 99000150]

##### Gateway Ventures, L.P.; Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1994)) by Gateway Ventures, L.P., 8000 Maryland Avenue, Suite 1190, St. Louis, Missouri 63105, for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended (15 U.S.C. §§ 661 et seq.), and the Rules and Regulations promulgated thereunder. Gateway Ventures, L.P. is a limited partnership formed under Delaware law. Gateway Ventures, L.P. will be managed by its General Partner, Gateway Venture Associates, L.P., located at the same address as the applicant. John S. McCarthy, Richard F. Ford, and David F. Millet are the individual general partners of the General Partner. The following limited partner owns 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
The Danforth Foundation .....	10.39

The applicant will begin operations with capitalization of approximately \$7.5 million and will be a source of equity financings for qualified small business concerns. The applicant will invest primarily in the states of Massachusetts and Missouri but will consider investment in businesses in other areas of the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in St. Louis, Missouri.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: November 10, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94-28525 Filed 11-17-94; 8:45 am]

BILLING CODE 8025-01-M

## SELECTIVE SERVICE SYSTEM

### Computer Matching Between the Selective Service System and the Department of Education

AGENCY: Selective Service System.

ACTION: Notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503), and the Office of Management and Budget (OMB) Guidelines on the conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89-22, the following information is provided:

#### 1. Name of Participating Agencies

The Selective Service System (SSS) and the Department of Education (ED).

#### 2. Purpose of the Match

The purpose of this matching program is to ensure that the requirements of section 12(f) of the Military Selective Service Act (50 U.S.C. App. 462(f)) are met.

#### 3. Authority for Conducting the Matching Program

Computerized access to the Selective Service Registrant Registration Records (SSS 10) enables the U.S. Department of Education to confirm the registration status of applicants for assistance under Title IV of the Higher Education Act of 1965 (HEA), as amended (20 U.S.C. 1070 *et seq.*). Section 12(f) of the Military Selective Service Act, as amended (50 U.S.C. App. 462(f)), denies eligibility for any form of assistance or benefit under Title IV of the HEA to any person required to present himself and submit to registration under section 3 of the Military Selective Service Act who fails to do so in accordance with that section and any rules and regulations issued under that section. In addition, the Military Selective Service Act and 34 CFR 668.33 specify that any person required to present himself and submit to registration under section 3 of the Military Selective Service Act file a

statement that he is in compliance with the Military Selective Service Act. Furthermore, section 12(f)(3) of the Military Selective Service Act authorizes the Secretary of Education, in agreement with the Director of the Selective Service System, to prescribe methods for verifying the statement of compliance filed by students.

#### 4. Categories of Records and Individuals Covered

##### 1. Federal Student Aid Application File (18-40-0014)

Individuals covered are men born after December 31, 1959, but at least 18 years old by June 30 of the applicable award year.

##### 2. Selective Service Registration Records (SSS 10)

##### 5. Inclusive Dates of the Matching Program

Commence on January 1, 1995 or 40 days after copies of the matching agreement are transmitted simultaneously to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget, whichever is later, and remain in effect for eighteen months unless earlier terminated or modified by agreement of parties.

##### 6. Address for Receipt of Public Comments or Inquiries

Steven L. Melancon, COL FA ARNGUS, Associate Director for Operations, The Selective Service System, 1515 Wilson Boulevard, Arlington, VA 22209-2425.

Dated: November 15, 1994.

Gil Coronado,

Director.

[FR Doc. 94-28572 Filed 11-17-94; 8:45 am]

BILLING CODE 8015-01-M

## DEPARTMENT OF STATE

### Office of the Secretary

[Public Notice 2117]

#### Extension of the Restriction on the Use of the United States Passport for Travel To, In, or Through Libya.

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports were declared invalid for travel to, in, or through Libya unless specifically validated for such travel. This

restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the possibility of hostile acts against Americans in Libya.

The Government of Libya still maintains a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area \*\*\* where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, all United States passports shall remain invalid for use in travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the *Federal Register* and shall expire at the end of one year unless sooner extended or revoked by Public Notice.

Dated: November 14, 1994.

Strobe Talbott,

Acting Secretary of State.

[FR Doc. 94-28523 Filed 11-17-94; 8:45 am]

BILLING CODE 4710-10-M

## THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

### Affordable Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of change of meeting time.

**SUMMARY:** This is to announce a time change for the planning session of the Affordable Housing Advisory Board meeting scheduled for November 21 in Atlanta, Ga. as published in the *Federal Register*, November 8, 1994, page 55733, 59 FR. The new meeting time is 9:30 a.m. to noon. (Please note that the Affordable Housing Advisory Board is holding its meeting in two sessions. There are no changes for the general session scheduled November 22 at the Federal Reserve Bank of Atlanta, 104 Marietta Street, Conference Center, third floor, 8:30 a.m. to noon also announced in the *Federal Register*, November 8, 1994, page 55733, 59 FR.)

**DATE:** Monday, November 21, 9:30 a.m. to noon.

**ADDRESS:** Atlanta Marriott Marquis, 265 Peachtree Center Avenue, Atlanta, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, N.W., Washington, DC 20232, 202/416-2626.

Dated: November 16, 1994.

Jill Nevius,

Committee Management Officer.

[FR Doc. 94-28670 Filed 11-16-94; 12:42 pm]

BILLING CODE 2221-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 94-099]

#### National Offshore Safety Advisory Committee

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for applications.

**SUMMARY:** The U.S. Coast Guard is seeking applicants for appointment to membership on the National Offshore Safety Advisory Committee (NOSAC).

**DATES:** Completed applications and resumes should be submitted to the Coast Guard before August 3, 1995.

**ADDRESSES:** Persons interested in applying for membership on NOSAC may obtain an application form by writing to Commandant (G-MVI-4), U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593-0001, or by calling the points of contact in the following paragraph.

**FOR FURTHER INFORMATION CONTACT:** CDR Adan D. Guerrero, Executive Director, or Mr. Jim Magill, Assistant to the Executive Director; telephone (202) 267-2307, fax (202) 267-1069.

**SUPPLEMENTARY INFORMATION:** The National Offshore Safety Advisory Committee advises the Secretary of Transportation on safety and rulemaking matters related to the offshore mineral and energy industries. The Committee consists of 14 regular members who have particular expertise, knowledge and experience regarding the transportation and other technology, equipment, and techniques that are used, or are being developed for use, in the exploration or recovery of offshore mineral resources. The advice and recommendations of NOSAC also assist the U.S. Coast Guard in formulating U.S. positions at meetings of the International Maritime Organization.

The Committee meets at least once a year at U.S. Coast Guard Headquarters, Washington, DC or another location selected by the Coast Guard. Special meetings may also be called.

Subcommittee meetings are held to consider specific issues as required. The Committee charter requires membership to be distributed among particular segments of the offshore industry, including representation from the general public and environmental interests. Applications will be considered for five positions that expire or become vacant in January, 1996. To be eligible, applicants should have experience in offshore operations, drilling, production, construction, or offshore supply vessel operations. Each member serves for a term of three years. Members of the Committee serve at their own expense, and receive no salary, reimbursement of travel expenses, or their compensation from the Federal Government.

In support of the U.S. Department of Transportation's policy on ethnic and gender diversity, the Coast Guard is especially seeking applications from qualified women and minority group members.

Dated: November 9, 1994.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 94-28579 Filed 11-17-94; 8:45 am]

BILLING CODE 4910-14-M

[CGD 94-098]

#### Differential Global Positioning System, Hawaii Region; Environmental Assessment

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of availability.

**SUMMARY:** The Coast Guard has prepared a Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for implementing a Differential Global Positioning System (DGPS) Service in the Hawaiian region of the United States. The EA concluded that there will be no significant impact on the environment and that preparation of an Environmental Impact Statement will not be necessary. This notice announces the availability of the EA and FONSI and solicits comments on them.

**DATES:** Comments must be received on or before December 19, 1994.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to

room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

Copies of the EA and FONSI may be obtained by contacting LCDR George Privon at (202) 267-0297 or faxing a request at (202) 267-4427. A copy of the EA (less enclosures) is also available on the Electronic Bulletin Board System (BBS) at the Navigation Information Service (NIS) in Alexandria, VA, (703) 313-5910. For information on the BBS, call the NIS watchstander at (703) 313-5900.

**FOR FURTHER INFORMATION CONTACT:** LCDR George Privon, Radionavigation Division, (202) 267-0297.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

Copies of the Programmatic Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) are available as described under ADDRESSES. The Coast Guard encourages interested persons to comment on these documents. The Coast Guard may revise these documents in view of the comments. If revisions are warranted, availability of the revised documents will be announced by a later notice in the **Federal Register**.

##### Background

As required by Congress, the Coast Guard is preparing to install the equipment necessary to implement a Differential Global Positioning System (DGPS) service in the Hawaiian region of the United States. DGPS is a new radionavigation service that improves upon the 100 meter accuracy of the existing Global Positioning System (GPS) to provide an accuracy of better than 10 meters. For vessels, this degree of accuracy is critical for precise electronic navigation in harbors and harbor approaches and will reduce the number of vessel groundings, collisions, personal injuries, fatalities, and potential hazardous cargo spills resulting from such incidents.

After extensive study, the Coast Guard has selected two sites in Hawaii for the DGPS equipment. The sites are in the vicinity of Upolu Point, HI and Kokole Point, HI. The sites are used already for related purposes and were chosen, in part, because their proposed use as consistent with their past and present use, thus minimizing further impact on the environment. The Upolu Point site was the location of a Loran transmitting station until the station was closed on December 31, 1992. The Kokole Point site is on an existing antenna field at the

Pacific Missile Range. DGPS signal transmissions will be broadcast in the marine radiobeacon frequency band (283.5 to 325 KHz) using less than 230 watts (effective radiated power). Signal transmissions at these low frequency and power levels have not been found to be harmful to the surrounding environment.

#### Proposed Installations at Each Site

(a) Radiobeacon Antenna—The Coast Guard proposes to install a 90 foot guyed antenna with an accompanying ground plane at the Upolu Point site. At the Kokole Point site a 150 foot guyed antenna with an accompanying ground plane will be installed. A ground plane for this antenna consists of approximately 120 copper radials (6 gauge copper wire) installed 6 inches (or less) beneath the soil and projecting outward from the antenna base. The optimum radial length is 300 feet. Wherever possible, a cable plow method will be used in the radial installation to minimize soil disturbance. Installation of the ground plane may require some clearing of bushes on the site.

(b) DGPS Antennas—Each site will require two 10 foot to 20 foot masts to support four small (4 inches by 18 inches diameter) receiving antennas. The masts will be installed on a concrete foundation. These masts are needed to support the primary and backup reference receivers and integrity monitors. The location of the two masts will be in the vicinity of the electronic equipment building or hut, but at least 50 feet to 100 feet from existing structures.

(c) Equipment shelter—A 10 foot by 16 foot equipment hut will be needed to house the DGPS equipment at the Upolu Point site while an existing equipment building will be used at the Kokole Point site.

(d) Utilities—The Coast Guard proposes to use available commercial power as the primary source for the electronic equipment. A telephone line will be required at each site for remote monitoring and operation.

#### Description of Each Site

The Upolu Point site is located approximately 20 miles northwest of Kamuela on the island of Hawaii. Until December 1922, the Coast Guard operated a Long Range Aid to Navigation (LORAN) station at this site. As a result, the site contains much of the infrastructure required for DGPW. The site will require installation of a 90 foot guyed antenna and a 10 foot by 16 foot equipment hut to house the DGPS electronic equipment.

The Kokole Point site is located on the U.S. Navy Barking Sands Pacific Missile Range on the island of Kauai. This is the site of an existing antenna field. Due to existing operations, most of the needed infrastructure for DGPS is already in place. The site will require the installation of a 150 foot guyed antenna.

Implementation of a DGPS service in the Hawaiian Region is determined to have no significant effect on the quality of the human environment or require preparation of an Environmental Impact Statement.

Dated: November 14, 1994.

R.C. Houle,

Captain, U.S. Coast Guard Acting Chief,  
Office of Navigation Safety and Waterway Services.

[FR Doc. 94-28580 Filed 11-17-94; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1-800-741-8138 or 301-443-0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

**MEETINGS:** The following advisory committee meetings are announced:

### Dental Products Panel of the Medical Devices Advisory Committee

**Date, time, and place.** December 5, 6, and 7, 1994, 9 a.m., Renaissance Hotel at Tech World, Salons A and B of the Renaissance Ballroom, 999 Ninth St. NW., Washington, DC.

**Type of meeting and contact person.** Closed committee deliberations, December 5, 1994, 9 a.m. to 1 p.m.; open public hearing, 1 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 5 p.m.; open public hearing, December 6, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open public hearing, December 7, 1994, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; Carolyn A. Tylenka, Center for Devices and Radiological Health (HFZ-410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD, 301-443-8897, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Dental Products Panel of the Medical Devices Advisory Committee, code 12518.

**General function of the committee.** The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

**Agenda—Open public hearing.** Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 28, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

**Open committee discussion.** On December 5, 1994, the committee will discuss: (1) Dental device ingredient labeling, and (2) a draft guidance document for temporomandibular joint implants. On December 6, 1994, the committee and the Dental Drug Products Panel Plaque Subcommittee will discuss over-the-counter (OTC) drug products bearing antiplaque and antiplaque-related claims. On December 7, 1994, the committee will discuss draft guidance documents for: (1) Dental endosseous implants, and (2) dental handpieces. The guidance documents are available through FDA's Division of

Small Manufacturers' Assistance at 1-800-638-2041.

**Closed committee deliberations.** The committee will discuss trade secret and/or confidential commercial information regarding a pending new drug application (NDA). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

#### Biological Response Modifiers Advisory Committee

**Date, time, and place.** December 8 and 9, 1994, 8 a.m., Holiday Inn—Bethesda, Versailles Ballroom I, 8120 Wisconsin Ave., Bethesda, MD.

**Type of meeting and contact person.** Open public hearing, December 8, 1994, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 10:30 a.m.; closed committee deliberations, 10:30 a.m. to 5 p.m.; closed committee deliberations, December 9, 1994, 8 a.m. to 12:30 p.m.; open committee discussion, 12:30 p.m. to 1:30 p.m.; William Freas or Pearlina Muckelvene, Scientific Advisors and Consultants Staff (HFM-21), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-594-1054, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Biological Response Modifiers Advisory Committee, code 12388.

**General function of the committee.** The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

**Agenda—Open public hearing.** Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 2, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

**Open committee discussion.** On December 8, 1994, the committee will clarify issues related to the safety and efficacy of hematopoietic support regimens in the setting of myelotoxic chemotherapy as discussed in the May 25 and 26, 1994, Biological Response Modifiers Advisory Committee meeting.

The committee will also discuss prophylaxis for renal allograft rejection.

**Closed committee deliberations.** On December 8 and 9, 1994, the committee will discuss trade secret and/or confidential commercial information relevant to pending IND's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

#### Medical Imaging Drugs Advisory Committee

**Date, time, and place.** December 9, 1994, 9 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

**Type of meeting and contact person.** Open public hearing, 9 a.m. to 10 a.m., unless public participation does not last that long; closed committee deliberations, 10 a.m. to 3 p.m.; Leander B. Madoo, Center for Drug Evaluation and Research (HFD-9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4695, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Medical Imaging Drugs Advisory Committee, code 12540.

**General function of the committee.** The committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in diagnostic and therapeutic procedures using radioactive pharmaceuticals and contrast media used in diagnostic radiology.

**Agenda—Open public hearing.** Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 25, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

**Closed committee deliberations.** The committee will discuss trade secret and/or confidential commercial information relevant to pending IND's and pending NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b (c)(4)).

#### Blood Products Advisory Committee

**Date, time, and place.** December 15 and 16, 1994, 8 a.m., Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD.

**Type of meeting and contact person.** Open committee discussion, December

15, 1994, 8 a.m. to 9:30 a.m.; open public hearing, 9:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 2 p.m.; open public hearing, 2 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 4 p.m.; open public hearing, 4 p.m. to 4:30 p.m., unless public participation does not last that long; open committee discussion, 4:30 p.m. to 5 p.m.; open committee discussion, December 16, 1994, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 11:30 a.m., unless public participation does not last that long; open committee discussion, 11:30 a.m. to 2:15 p.m.; closed committee deliberations, 2:15 p.m. to 3 p.m.; Linda A. Smallwood, Office of Blood Research and Review (HFM-350), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-6700, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Blood Products Advisory Committee, code 12388.

**General function of the committee.** The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

**Agenda—Open public hearing.** Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 5, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

**Open committee discussion.** On the morning of December 15, 1994, the committee will: (1) Discuss and provide recommendations on product recalls related to inadvertent collections from donors with Creutzfeldt-Jakob disease; and (2) hear a presentation and discuss donor safety and product dose issues on collection of two units of red cells at a single donation. In the afternoon, the committee will discuss the retrieval of products that originate from donors who subsequently test positive for viral markers of bloodborne transmissible infections. The agency is announcing the intent to make available 3 weeks prior to the meeting, a draft document on the latter issue to be discussed at the

meeting. Requests for single copies of the draft document may be made to the Division of Congressional, International, and Consumer Affairs (HFM-11), Center for Biologics Evaluation and Research, rm. 200N, 1401 Rockville Pike, Rockville, MD 20857, 301-594-2000. On the morning of December 16, 1994, the committee will: (1) Hear an informational presentation on Hepatitis C virus safety of immune globulins, and (2) discuss issues pertaining to the clinical validation of nucleic acid assays used for patient and drug monitoring in human immune deficiency virus disease. In the afternoon, the committee will discuss the report of the intramural scientific review for the Laboratory of Hepatitis, Division of Transfusion Transmitted Diseases, Office of Blood and Blood Research, Center for Biologics Evaluation and Research.

**Closed committee deliberations.** On December 16, 1994, the committee will discuss information relevant to the intramural scientific review report, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(6)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or

otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files

compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberation to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 15, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.  
[FR Doc. 94-28636 Filed 11-17-94; 8:45 am]  
BILLING CODE 4160-01-F

#### **Pesticide Residue Monitoring Data Base for Fiscal Year 1993; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of Fiscal Year (FY) 1993

pesticide residue monitoring data on computer diskettes. This is the second annual comprehensive compilation and public release of FDA monitoring data for pesticide residues in foods. The agency is making the information available on computer diskettes to facilitate its dissemination to interested persons.

**ADDRESSES:** Pesticide residue monitoring data on computer diskettes may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield VA 22161. Orders must reference NTIS order number PB94-501681 and include a payment of \$50.00 for each copy of the data base. In addition there is a handling fee of \$4.00 for one copy of the data base, \$6.00 for two copies, and \$8.00 for three or more copies. Payment may be made by check, money order, charge card (American Express, VISA, or MasterCard), or by billing arrangements made with NTIS. Charge card orders must include the charge account number and expiration date. For telephone orders or further information on placing an order call NTIS at 703-487-4650.

**FOR FURTHER INFORMATION CONTACT:** Marcia G. Houston, Center for Food Safety and Applied Nutrition (HFS-308), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-4152.

**SUPPLEMENTARY INFORMATION:** FDA is making available its FY 93 pesticide residue monitoring data as a set of three personal computer diskettes. The data base includes FDA pesticide monitoring coverage and findings for FY 93 by country/food product/pesticide combination. The data base is accompanied by a search program and report formats, written in dBase III+. Each year FDA receives numerous requests for these data. FDA has determined that it will facilitate dissemination of these data to interested persons if the agency provides for their general availability in a standardized diskette. A user's manual will be provided that contains installation instructions and describes the structure and content of the data base.

Dated: November 10, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94-28504 Filed 11-17-94; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 92N-0434]

**Citizen Petition Regarding the Food and Drug Administration's Policy on Promotion of Unapproved Uses of Approved Drugs and Devices; Request for Comments**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting comment on a citizen petition from the Washington Legal Foundation (WLF). The petition requests that FDA withdraw the document entitled, "Draft Policy Statement on Industry-Supported Scientific and Educational Activities," (hereinafter referred to as the draft policy statement) which was published in the *Federal Register* on November 27, 1992. The draft policy statement was intended to provide guidance concerning educational and scientific activities that may be supported by industry without causing them to be regulated as advertising or promotional labeling. The draft policy statement was intended to facilitate the flow of reliable information about FDA-regulated products. Nonetheless, the petition claims that the draft policy statement and FDA's regulation of the promotion of unapproved uses generally are contrary to the First Amendment's protection of speech and interfere with health care professionals' provision of effective medical care. The petition requests that FDA formally adopt a policy stating that, while drug and medical device manufacturers should not label their products for unapproved uses, they will not be subject to regulatory action for facilitating the dissemination of "truthful" information about such unapproved uses. This notice requests comments on the petition and certain questions regarding the draft policy statement and FDA regulation of promotion of unapproved uses.

**DATES:** Submit written comments by February 16, 1995.

**ADDRESSES:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Ilisa B. G. Bernstein or Philip L. Chao, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2831.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Traditionally, FDA has regarded industry-supported communication, including scientific and educational activities on human and animal drugs, biologic products, and medical devices for health care professionals, as activities subject to regulation.

In general, under the Federal Food, Drug, and Cosmetic Act (the act) and the Public Health Service Act, any person who wishes to introduce or deliver for introduction into interstate commerce any new drug, biological product, or new animal drug must demonstrate that the product is safe and effective for its intended uses (see sections 505(a) and 512(a) of the act (21 U.S.C. 355(a) and 360b(a)) and section 351 of the Public Health Service Act (42 U.S.C. 262)). Any person who wishes to introduce or deliver for introduction into interstate commerce a new medical device must either demonstrate that the device is safe and effective for its intended uses or that it is substantially equivalent to another device for which such a showing is not required. (See sections 510(k), 513(f), and 515(a) of the act (21 U.S.C. 360(k), 360c(f), 360e(a)).) Such demonstrations of product safety and efficacy usually consist of data and information derived from clinical investigations and presented as part of a marketing application. The marketing application also contains information regarding the product's intended uses, the patient population (including any special conditions, restrictions, or limitations for segments of the population, such as children, pregnant women, or the elderly), potential adverse events associated with the product's use, and technical information about the product (see, e.g., 21 CFR 314.50, 514.1, 601.25, and 814.20). If FDA agrees that a product is safe and effective for its intended use, as reflected in the marketing application, it approves the application and the product's professional labeling.<sup>1</sup> The uses that are approved by the agency are sometimes referred to as "labeled" uses because they appear in the product's approved labeling. Uses that do not appear in the labeling and are not approved by the agency are referred to as "unapproved," "unlabeled," "off-label," or "extra-label" uses.

If labeling for a drug or device fails to contain adequate directions for use, the

<sup>1</sup> In the case of biologic products, the firm must initially file both an establishment license application and a product license application. Upon simultaneous approval, the firm is granted a U.S. license. Once licensed, the firm may enter the licensed product into interstate commerce.

drug or device may be deemed to be misbranded under section 502(f) of the act (21 U.S.C. 352(f)) and subject to seizure and other penalties.<sup>2</sup> Prescription drugs, prescription medical devices, and restricted medical devices are also misbranded unless "all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor" contain a brief summary or statement of the product's effectiveness or intended uses, side effects, and contraindications (see sections 502(n) and 502(r) of the act (21 U.S.C. 352(n) and 352(r))). A drug or device is misbranded in accordance with section 502(a) of the act (21 U.S.C. 352(a)) if its labeling is false or misleading. Additionally, medical devices are considered to be misbranded under section 502(o) of the act (21 U.S.C. 352(o)) if a notice or other information was not provided in accordance with the provisions of section 510(k) of the act. The listing of unapproved uses in the labeling or advertising of an approved device results in an adulterated medical device under section 501(f)(1)(B) of the act (21 U.S.C. 351(f)(1)(B)).

FDA has long regulated drugs and devices (including biological products and animal drugs) based on the intended uses for the products. Under section 201 of the act (21 U.S.C. 321), which defines the terms "drug" and "device," the intended use of an article determines whether the article is a drug or a device. The package insert or product manual (approved professional labeling) which, for approved and/or licensed products, physically accompanies the approved product, sets forth the uses for which the product has been demonstrated to be safe and effective. The package insert and product manual are not, however, the sole means by which manufacturers provide information on their products to health care professionals and consumers. The agency thus regulates products based not only on information provided "with" the product, but also based on information disseminated by manufacturers in other contexts, such as scientific and educational meetings and symposia, books, and articles, in part because all of these materials can create new intended uses for the products, which must be reflected in the labeling of the products.

This longstanding regulatory scheme has been challenged in a citizen petition filed by the WLF on October 22, 1993

(Docket No. 92N-0434/CP1). The petitioner asks FDA to adopt a formal new policy that:

\*\*\* recognizes the important role played by off-label uses of approved drugs and medical devices in the proper administration of health care \*\*\* and that declares that FDA will not interfere in non-labeling activities of drug and medical device manufacturers whose effect is to promote—through the dissemination of truthful medical information—off-label [unapproved] uses of approved drugs and medical devices. (See petition at page 3.)

The petitioner requests specifically that the agency withdraw its Draft Policy Statement on Industry-Supported Scientific and Educational Activities (57 FR 56412, November 27, 1992), see petition at page 3, and acknowledge that manufacturers can provide information on unapproved uses through the dissemination of books and through scientific and educational activities for health care professionals. (See petition at pages 7 through 12, and 17.)

In support of this position, the petitioner argues that the agency's policy on promotion of unapproved uses is detrimental to patient care. The petitioner asserts that oncologists and orthopedic physicians commonly use approved drugs and devices for unapproved indications and believes that the public interest is best served by the widest possible dissemination of accurate information about unapproved uses. The petitioner views FDA's policy as contrary to this interest and asserts that FDA intends to prevent the dissemination of information on unapproved uses and eliminate all unapproved uses of approved drugs and medical devices. (See petition at page 11.)

The petitioner also argues that FDA's policy is legally unsound. The petitioner asserts that the act does not provide authority for such a policy and that the policy violates the First Amendment to the Constitution.

The petition is based, in part, on erroneous interpretations of FDA policy. The petitioner asserts, without basis, that FDA fails to acknowledge the importance to physicians of reliable information on unapproved uses, that FDA seeks to eliminate all dissemination of information on unapproved uses, and ultimately, that FDA intends to eliminate all unapproved uses of FDA-regulated products by physicians.

FDA disagrees with the petition's characterization of FDA policy. The draft policy statement does not prohibit discussion of unapproved uses. However, based on its experience, FDA has found that the promotion of

unapproved uses by manufacturers of the promoted products can subject patients to unnecessary and dangerous risks. Nevertheless, because the petition raises fundamental questions regarding FDA's regulation of the safety and effectiveness of therapeutic and diagnostic products, FDA believes that a full airing of these issues, with an opportunity for all interested parties to comment in writing, will be useful to the agency, the regulated industry, and the interested public.

## II. FDA Policy on Promotion of Unapproved Uses

Over a decade ago, the *FDA Drug Bulletin* informed the medical community that "once a [drug] product has been approved for marketing, a physician may prescribe it for uses or in treatment regimens of patient populations that are not included in approved labeling." The publication further stated that:

'unapproved' or, more precisely, 'unlabeled' uses may be appropriate and rational in certain circumstances, and may, in fact reflect approaches to drug therapy that have been extensively reported in medical literature \*\*\* Valid new uses for drugs already on the market are often first discovered through serendipitous observations and therapeutic innovations, subsequently confirmed by well-planned and executed clinical investigations.

(See *FDA Drug Bulletin* 12:4-5, 1982.)<sup>3</sup> The agency and its representatives have restated this policy on numerous occasions.<sup>4</sup>

At the same time, FDA recognizes the need to ensure that data are generated from adequate and well-controlled studies to determine a product's safety and effectiveness for its intended uses and that the label of the product can be updated to reflect the new uses. Promotion of unapproved uses can encourage physicians and patients to make decisions based on statements or claims that are, in many cases, supported by little or no data. Thus, FDA's position is that the promotion of unapproved uses, either by companies or other parties that benefit by the promotion, can place physicians and

<sup>3</sup> Similarly, the agency does not intervene in unapproved use of devices in the absence of a significant public health concern or significant risk to the patient.

<sup>4</sup> FDA representatives have described the policy in professional journals, e.g., Nightingale, S. L., "Use of Drugs for Unlabeled Indications," *American Family Physician*, 269, September 1986, Nightingale, S. L., "Unlabeled Use of Approved Drugs," *Drug Information Journal*, 26:141-147, 1992, and in public meetings, e.g., Young, F. E., "Paying for Progress: Reimbursement and Regulated Medical Products: Speech for the Blue Cross and Blue Shield Association," Technology Management Conference, Chicago, November 1, 1988.

<sup>2</sup> Biological products are also drugs or devices and, therefore, subject to regulation under the misbranding provisions of the act.

patients in positions where they cannot make an informed, unbiased decision. It can also decrease the incentive of sponsors to conduct the well-controlled clinical investigations that are necessary to demonstrate whether the products are safe and effective for their intended uses. Without well-controlled trials, physicians will not have the information needed to optimally use the product.

A product's intended use is usually primarily a function of the manner in which a company characterizes its product in the marketplace. The agency's focus on the company's characterization of its product in the marketplace leads naturally to an examination of information disseminated by or on behalf of a company, in addition to the approved labeling that physically accompanies the product. The indications for use set forth in the approved labeling provided with the product may not necessarily reflect the uses for which the company is actually marketing its product. The agency's experience over the years in regulating drug and device safety and effectiveness has demonstrated that regulatory control over package inserts, user manuals, and traditional advertising formats may be rendered meaningless if the company is free to engage in aggressive promotion outside of these formats. The agency has thus traditionally evaluated the promotion of drugs and devices through various other avenues of communication, including books, reprints of articles from scientific journals, and scientific and educational symposia, to determine whether the products are being improperly promoted with respect to the approved labeling for the product.

This longstanding policy is best reflected in the agency's application of the statutory requirement that the labeling of drugs and devices bear adequate directions for use. (See section 502(f)(1) of the act). The courts have agreed with the agency that this provision requires information not only on how the product is to be used, but also on what the product is to be used for. In *Alberty Food Products Co. v. United States*, 185 F.2d 321, 325 (9th Cir. 1950), the United States Court of Appeals for the Ninth Circuit found a product to be misbranded because its labeling failed to bear a description of therapeutic uses suggested by the company in newspaper advertisements.

Following the *Alberty* case, the agency promulgated a regulation providing that the company's responsibility to provide labeling for all intended uses is broad and objective, and reaches uses suggested outside of

traditional labeling and advertising formats. The regulation provides, in relevant part, that the term "intended uses" refers to:

\*\*\* the objective intent of the persons legally responsible for the labeling of drugs. The intent is determined by such persons' expressions or may be shown by the circumstances surrounding the distribution of the article. This objective intent may, for example, be shown by labeling claims, advertising matter, or oral or written statements by such persons or their representatives. It may be shown by the circumstances that the article is, with the knowledge of such persons or their representatives, offered and used for a purpose for which it is neither labeled nor advertised. \*\*\*

(See 21 CFR 201.128. See also 21 CFR 801.4; *United States v. Three Cartons, More or Less, "No. 26 Formula GM etc."*, 132 F. Supp. 569, 574 (S.D. Cal. 1952).)

Information disseminated by companies in contexts such as scientific and educational meetings, symposia, books, and articles may provide evidence of a regulated product's intended use. If these formats include statements promoting a use that is inconsistent with the product's approved labeling, the product is misbranded for failure to bear labeling with adequate directions for use.

FDA also finds support for its policy of examining a broad array of information disseminated by companies in the general grant of authority over labeling and advertisements. Section 201(m) of the act defines the term "labeling" to include all "written, printed, or graphic" materials "accompanying" a regulated product. The Supreme Court has agreed with the agency that this definition is not limited to materials that physically accompany a product. "Labeling" may include materials that supplement or explain a product that are disseminated in direct mail, and/or otherwise distributed by or on behalf of the company. The Court has deemed the textual relationship between the materials and the products to be fundamental. (*Kordel v. United States*, 335 U.S. 345, 349-350 (1948).)<sup>5</sup>

The agency has adopted a similar interpretation of the term "advertisement," which appears in section 502(n) of the act (prescription drugs), and in section 502(q) of the act (restricted devices). Although the act does not define the term

"advertisement," section 502(n) of the act indicates that "advertising" does not include materials regulated as labeling. In addition, the legislative histories of the 1938 act and the 1962 amendments to the act support a broad construction of what constitutes "advertising." Thus, the agency interprets the term advertisement to include information (other than labeling) that originates from the same source as the product and that is intended to supplement or explain the product. (See also 21 CFR 801.109(d) that states a prescription medical device must bear, among other things, labeling containing adequate directions for use for all advertised uses or it may be considered to be misbranded.)

The statutory requirement of adequate directions for use and the statutory concepts of labeling and advertisements limit the ability of companies to disseminate information on unapproved uses. However, because the agency recognizes the importance of dissemination of reliable scientific information on both approved and unapproved uses, it has developed a number of policies related to dissemination of such information.

In October 1991, FDA informally released an early draft document called "Drug Company Supported Activities In Scientific or Educational Contexts: Draft Concept Paper" (hereinafter referred to as the draft concept paper). The draft attempted to clarify FDA's position on industry-supported scientific and educational activities. Certain elements of the draft concept paper met some resistance from the regulated industry, health care professional organizations, and academic communities. With substantial input from these and other interested parties, FDA developed the draft policy statement which was published in the *Federal Register* on November 27, 1992, for public comment, and which is now one of the subjects of the WLF Petition. The draft policy statement is part of an effort to produce a policy statement that reasonably accommodates the need for industry-supported scientific and educational activities and the need to regulate industry labeling and advertising in accordance with the act and the Public Health Service Act. (See Draft Policy Statement on Industry-Supported Scientific and Educational Activities at 57 FR 56412.) The draft policy statement distinguishes between company-supported scientific and educational activities that are independent of the influence of the supporting company and those that are not. The content of independent activities would not be regulated by

<sup>5</sup> See also *United States v. Urbuteit*, 335 U.S. 355 (1948); *United States v. Articles of Drug* \*\*\* "Cal's Tupelo Blossom U.S. Fancy Pure Honey," 344 F. 2d 288 (6th Cir. 1965); *United States v. Articles of Drug*, 32 F.R.D. 32 (S.D. Ill. 1963); *United States v. Eight Cartons Containing "Plantation 'The Original' etc., Molasses,"* 103 F. Supp. 626, 627 (W.D. N.Y. 1951).

FDA. The purpose of the draft policy statement is to clarify this distinction.

The draft policy statement focuses largely on the relationship between the supporting company and the independent provider responsible for developing the activity in which information is disseminated. The agency generally seeks to determine whether the activity is designed to be a promotional vehicle for the supporting company's products or an independent educational program. The draft policy statement recommends that the supporting company enter into a written agreement with the provider, making clear that the funded event is not to be a promotional program for the supporting company, but rather is intended to be an independent scientific or educational activity, controlled in content and format by the provider and characterized by balance, objectivity, scientific rigor, and appropriate disclosure of financial support or conflicts of interest. The draft policy statement states, in part, that:

If the company abides by such a written agreement and does not otherwise circumvent its purpose, the agency does not intend to regulate the activity under the labeling and advertising provisions of the act, nor under the reporting requirements related to labeling or as advertisements. (57 FR 56413.)

Under the draft policy statement, companies could provide financial, logistical, and technical support for the program without being held responsible for the program's content for regulatory purposes.

In preparing the draft policy statement, FDA conducted an extensive outreach effort with scientific and health care professionals, industry, consumer groups, and other government agencies. FDA proceeded in this fashion because it recognized the delicate balance required to accommodate the need for industry-supported scientific and educational activities and the statutory mandate that products be safe and effective for their intended uses. In developing the draft policy statement, senior agency officials met with representatives from the American Medical Association, the Accreditation Council for Continuing Medical Education, the Pharmaceutical Manufacturers Association (now called the Pharmaceutical Research & Manufacturers of America), the Association of American Medical Colleges, the Health Industry Manufacturers' Association, the Pharmaceutical Advertising Council, the American Osteopathic Association, the American Council on Pharmaceutical Education, and others.

Written comments submitted to the agency after publication of the draft policy statement were predominantly supportive. Those supporting the draft policy statement included, among others, the American Medical Association, the Pharmaceutical Manufacturers Association, the American Dental Association, the Accreditation Council for Continuing Medical Education, the American Nurses Association, the American Academy of Family Physicians, the University of Arizona Health Sciences Center, the University of Kentucky, the MOET Institute, and the American Association of Dental Schools.

Most comments supported the draft policy statement and sought only minor changes or clarifications. Some comments said that the draft policy statement was not sufficiently restrictive. One comment said that the draft policy statement "represents a cave-in to drug industry/organized medicine pressures." Other comments argued that the policy exceeded FDA's authority under the act or unjustifiably expanded FDA's legal authority. Some comments claimed FDA's authority in this area is limited by the First Amendment's protections afforded to commercial speech or that the draft policy statement restricts a company's ability to engage in free scientific exchange. Several comments sought clarification of the draft policy statement's application beyond live presentations. Certain comments requested that the draft policy statement exempt written or other enduring materials from its scope.

In addition to dissemination through live, oral, independent and nonpromotional educational activities, such as certain symposia, information on unapproved uses may be disseminated through the submission of original research to peer-reviewed publications. The agency has recognized the need among health care professionals for peer review and dissemination of the latest significant scientific data and information on drugs and devices in scientific journals. The agency has thus followed a course under which it may refrain from regulating the dissemination of information on unapproved uses if the dissemination involves submission of original research to peer-reviewed journals.

Under current FDA policy, companies may also disseminate information on unapproved uses in response to unsolicited requests for scientific information from health care professionals. Scientific departments within regulated companies generally maintain a large body of information on

their products. When health care professionals request such information, companies can provide responsive, nonpromotional, balanced, scientific information, which may include information on unapproved uses, without subjecting their products to regulation based on the information. This policy permits companies to inform health care professionals about the general body of information available from the company.

Companies may also disseminate independently prepared educational materials that contain product information. As discussed above, the agency's general exercise of regulatory authority over company dissemination of books and similar materials containing product information is well established in the case law. However, agency policy is to permit dissemination of materials that are independently prepared, are prepared solely for educational use, are in the form of balanced educational material, are not promotional in nature, cover a number of different products, and are not associated in any way with a promotional campaign for a specific product.

Although recognized medical textbooks have been disseminated by companies under this policy, dissemination of materials that are not recognized by health care professionals or are not independently prepared may lead to agency regulation. Thus, as in the matter raised by the petitioner involving "edited" versions of a recognized textbook, the agency has informed companies that their products may be subject to regulation based on the dissemination of books that are designed or edited by or for the company (so-called "custom" textbooks).

FDA has met with the American Medical Writers Association and the American Medical Publishers regarding FDA's development of a policy clarification that specifically addresses "enduring materials." (The term "enduring materials" refers to items such as books, reprints of articles, and other printed material, as well as programmed course materials and electronic or recorded material such as computer disks and videotape.) These groups voiced concern that application of the draft policy statement to enduring materials would impede their distribution and the free flow of information. FDA reiterates that it does not wish to regulate either oral presentations or enduring materials that are independent and nonpromotional in nature.

FDA has also taken steps to obtain more information on unapproved uses of approved drug products to facilitate approval of important unapproved uses that are supported by adequate data. In April 1993, the agency invited several organizations to identify prevalent unapproved uses that have therapeutic significance, and that may be supported or partially supported by published or unpublished clinical data. The agency indicated that it would encourage manufacturers of the identified products to submit supplemental applications for those uses. FDA received over 40 comments and is presently reviewing the information that it has received.

### III. Risks Associated With Unregulated Promotion of Unapproved Uses

Although agency policy has allowed companies several avenues for disseminating scientific information concerning unapproved uses of their products, FDA has not abandoned its general position prohibiting the promotion of unapproved uses. The agency has seen numerous examples of risks associated with the promotion of unapproved uses in a variety of contexts.

#### A. Post-Infarction Anti-Arrhythmic Agents

It is known that patients after an acute myocardial infarction (AMI, or heart attack) who have a high rate of ventricular premature beats (VPB's) have a higher mortality, especially sudden death, over the year following the heart attack, than patients with fewer VPB's. There are, moreover, plausible relationships between ventricular premature beats and death; e.g., a ventricular premature beat at the wrong time can trigger ventricular tachycardia (VT), a poorly functional rhythm that tends to degenerate ventricular fibrillation, which is always fatal if not reversed. Still, regardless of whether the relationships are plausible, the question is whether lowering the rate of ventricular premature beats will, in fact, lead to fewer deaths. FDA has never accepted decreased rate of ventricular premature beats as a surrogate for improved survival. In fact, labeling of anti-arrhythmics in the late 1970's and 1980's began to emphasize that information on post-AMI use was not available and that there was no evidence in any situation that anti-arrhythmics improved survival. No sponsor ever asked for a survival claim, but many practitioners continued to use anti-arrhythmics because they had the impression (which was unsubstantiated) that survival would be favorably affected by VPB suppression.

Early attempts in controlled studies to see whether post-AMI anti-arrhythmic therapy improved survival showed no benefit and tended to show an adverse effect of the treatment, but the studies were flawed, mainly because they did not choose a population with enough VPB's to benefit. The Cardiac Arrhythmia Suppression Trial (CAST) was an attempt to get a definitive answer by selecting patients with high VPB rates, showing that a drug suppressed VPB's, and then randomizing the patients to either that drug or placebo to examine survival. The initial drug screening period also allowed exclusion of patients whose rhythm was made worse by the drug (pro-arrhythmic effect), a recognized potential problem with these drugs.

This trial showed a highly unexpected result. Rather than helping patients, the drugs studied (flecainide and encainide) caused a 2.5-fold increase in mortality compared to placebo. A second part of the trial also showed an adverse morbidity effect of moricizine, another anti-arrhythmic agent. Meta-analysis of studies of anti-arrhythmic drugs in the post-AMI setting also show adverse trends. There is no anti-arrhythmic agent, except beta blockers, that has had a favorable effect on post-AMI survival. Indeed, when these agents have been properly studied in the post-AMI setting, they have taken, not saved, lives.

Despite the absence of evidence showing the value of post-AMI VPB suppression, use of anti-arrhythmic agents for that unapproved indication was substantial even though drug companies could not legally promote antiarrhythmic drugs for the unapproved use. Given the greater mortality in those patients who received the drug, this was an imprudent claim, but it reflects the potential power of plausible, but under-documented claims in difficult situations, e.g., where there is no good treatment for a condition.

#### B. Post-Infarction Calcium-Channel Blockers

Calcium-channel blockers are effective anti-anginal drugs that are generally well tolerated. Despite animal data that suggest potential benefit during and post-infarction, many studies of post-AMI calcium-channel blocker use have failed to show benefits, and some studies suggest that they may cause harm, particularly in patients with poor heart function. There is, therefore, no basis for recommending calcium-channel blockers for routine post-infarction use. In contrast, several beta-blockers (such as propranolol, timolol, metoprolol, and atenolol) have

unquestionably been shown to improve survival when given prophylactically to people who have had an AMI. Use of beta-blockers and calcium-channel blockers together can lead to problems, and, especially in patients with poor heart function, the combination could worsen the patient's condition. Physicians are aware of this and tend not to use the drugs together although there are many exceptions to this. To the extent, however, that physicians perceive calcium-channel blockers as a substitute for beta-blockers to reduce post-AMI morbidity and leave patients off beta-blockers, patients would be denied the benefits of the beta-blocker. On average, beta-blockers produce an approximately 25 percent reduction in annual mortality.

In the past, several manufacturers of calcium-channel blockers attempted to encourage their use in post-AMI situations, and the agency successfully rejected these attempts. Extensive promotion of calcium-channel blocker's for post-AMI use could have been extremely damaging because the use of calcium-channel blocker's in the population of post-AMI patients, or segments of that population, appears to be harmful. More importantly, however, increased use of calcium-channel blocker's due to the mistaken impression that they have the same effect as beta-blockers for post-AMI use would have inevitably decreased use of beta-blockers for this purpose and had a very substantial adverse effect on post-AMI survival. Given the many patients who sustain an AMI each year, the loss of life would surely be in the thousands. In this instance, promotion of an unapproved use would have been lethal.

#### C. Botulinum Toxin Type A and Cosmetic Use

"BOTOX" (botulinum Toxin Type A) is a licensed biologic product for use in the treatment of "strabismus and blepharospasm associated with dystonia." Currently, these are the only approved indications for use of this very deadly botulinum toxin. Nevertheless, a patient information/education bulletin announced new therapies and treatments using BOTOX strictly for cosmetic purposes. The bulletin claimed, "NEW WRINKLE REMEDY \* \* \* SAFE \* \* \* SIDE EFFECTS \* \* \* ARE MINIMAL \* \* \*." This promotion of an unapproved use is an egregious example of promoting a potentially toxic biologic for cosmetic purposes.

#### D. Unapproved Uses of Approved Devices

Unnecessary risks can also result from the promotion of unapproved uses of

approved medical devices. For example, one manufacturer's promotion of such unapproved uses encouraged physicians to extend the use of the device beyond that which has been proven to be safe and effective. Other promotions of unapproved uses for approved medical devices have involved claims for specific diseases or conditions that go beyond the general claims that FDA cleared or approved. Under the act, manufacturers must obtain new marketing approvals or clearances when they promote an approved or cleared device for a new intended use.

Since the public controversy surrounding silicone gel breast implants, some entrepreneurs have promoted various devices, such as a "breast coil," as effective in detecting leakage of the inner gel component of the implant to bodily tissues. In addition, some in vitro diagnostic tests, involving the examination of blood and serum samples, have been illegally promoted as capable of detecting silicone gel migration. To date, no evidence has been presented to validate the efficacy of either of these products for this unapproved use. The unapproved use of these devices may result in a misdiagnosis of leaking breast implants, thereby leading to unwarranted surgery to remove the implant.

Left unchecked, the promotion of unapproved uses not only can expose patients to unnecessary risks, but also has the potential to undermine the product approval process. If a manufacturer were free to promote its product for any use, the manufacturer would have little or no incentive to conduct the necessary clinical trials to demonstrate that the product is safe and effective for its intended uses. As a result, consumers would be exposed to products whose safety and effectiveness for the unapproved uses are unknown. In addition, consumers and health care professionals may avoid or delay using known, effective therapies or products as a result of the attention given to unapproved uses. Moreover, distinctions between approved and investigational products would also be blurred, and the protections associated with the use of investigational products (such as obtaining informed consent from research subjects and institutional review board approval to ensure that the rights and welfare of research subjects are protected) would be easily circumvented.

#### IV. Striking the Proper Balance: Issues Presented for Comment

Striking the proper balance between the need to regulate the promotion of

unapproved uses for drugs and devices and the need for reliable scientific data and information on unapproved uses of approved products has long been a difficult and controversial challenge for the agency. FDA has given serious consideration to these issues over the years and has worked with health professional organizations and other outside parties to develop policies that facilitate company-supported dissemination of reliable scientific information in a manner that is consistent with the statutory mandate that products be safe and effective for their intended uses. Nonetheless, the pending WLF petition raises issues that merit consideration.

FDA's policies allow for industry-supported scientific and educational activities and free exchange of information in a manner consistent with the statutory and regulatory goals. Because drugs and devices are regulated based on their "intended use" (as previously discussed), the agency's policies may have an unavoidable effect on the dissemination of information regarding unapproved uses for approved products. However, FDA emphasizes that these policies are narrowly drawn and are intended to further describe FDA's regulation of drugs and devices (not speech), to ensure that sponsors demonstrate that their drugs or devices are safe and effective for their intended uses, and to protect consumers from the risks associated with the unapproved use of drugs and devices whose safety and efficacy for the unapproved use have not been established. However, the WLF citizen petition asserts that the draft policy statement, and FDA's regulation of the promotion of unapproved uses generally, interfere with the First Amendment rights of physicians and consumers to receive information regarding unapproved uses. Consequently, FDA invites comments on the WLF citizen petition and on the following questions:

1. FDA has long recognized that physicians and other health care professionals may prescribe approved therapies for unapproved uses. FDA's experience, as previously described, demonstrates that promotion of unapproved uses may subject patients to serious and unnecessary risks and may cause health care professionals to refrain from using other products that may represent first-line therapy or present less risk. Given the current amount of information available to health care professionals, what are the added benefits, if any, of allowing manufacturers to promote unapproved uses of approved products to health care

professionals? What are the additional risks, if any?

2. The WLF petition argues that the draft policy statement and FDA's regulation of the promotion of unapproved uses are not authorized by the act, violate the First Amendment, and prevent health care professionals from providing "the best possible medical care." The agency believes that the draft policy statement and FDA's regulation of the promotion of unapproved uses are consistent with its authority and responsibilities under the act, do not violate the First Amendment, facilitate dissemination of accurate product information, and as noted above, prevent patients from being exposed to products whose safety and efficacy for an unapproved use have not been demonstrated. Given these different considerations, the amount of scientific and educational information available to health care professionals, and the sources of information (other than industry-supported activities) available to health care professionals, does the agency's implementation of its statutory authority significantly limit health care professionals' access to current, scientifically valid information regarding unapproved uses for approved products? Does the draft policy statement restrict or facilitate access by health care professionals to current, scientifically valid information regarding unapproved uses for approved products? How might the involvement of device or pharmaceutical manufacturers in the preparation or dissemination of information on unapproved uses affect that information?

3. The draft policy statement acknowledges that discussion of unapproved uses can be an important component of scientific and educational activities. The draft policy statement does not prohibit such discussion, but encourages disclosure of the fact that a product is not approved in the United States for the use under discussion. In addition, company-supported activities that do not relate to the company's product, a competing product, or suggest a use for the company's product would not be regulated as promotional activities under the draft policy statement. Given its narrow scope, how might the draft policy statement preclude health care professionals and patients from receiving important scientific information regarding unapproved uses for approved products?

4. The WLF petition suggests that FDA adopt a formal policy stating that FDA will not interfere in company-supported, "non-labeling activities"

whose effect is to promote—through the dissemination of “truthful” medical information—unapproved uses of approved drugs and medical devices. However, FDA’s broad experience reviewing promotional materials and scientific data suggests that determining whether information is “truthful” may depend on a variety of factors, including time, context, publication bias, lack of stringent review before publication, whether a published article appeared in a journal or in a purchased “supplement” to a journal, etc. For example, a preliminary study may suggest a result that appears “truthful” at the time the preliminary study is first announced, but subsequent studies may fail to reproduce those results, disprove the preliminary result, or even show that the preliminary study was flawed. Given the wide variety of factors, how should one determine whether the information in question is, indeed, “truthful?”

The draft policy statement and WLF citizen petition, as well as comments on the draft policy statement and petition, may be seen at the Dockets Management Branch (address above). Requests and comments are to be identified with the docket number found in brackets in the heading of this document. Copies of the draft policy statement and the WLF citizen petition may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Dated: November 8, 1994.

**William K. Hubbard,**

*Interim Deputy Commissioner for Policy.*

[FR Doc. 94-28506 Filed 11-17-94; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Environmental Impact Statement: Cattaraugus and Erie Counties, NY

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Erie and Cattaraugus Counties, New York.

#### FOR FURTHER INFORMATION CONTACT:

Robert J. Russell, Regional Director,  
New York State Department of  
Transportation, 125 Main St., Buffalo,  
NY 14203.

or

Harold J. Brown, Division  
Administrator, Federal Highway  
Administration, New York division,  
Leo W. O'Brien Federal Building, 9th  
Floor, Clinton Avenue and North  
Pearl Street, Albany, New York 12207.  
Telephone: (518) 472-3616.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to improve US Route 219 in Erie and Cattaraugus Counties, New York. The proposed improvement would involve the 28 miles of existing Route 219 corridor between Salamanca and Springville.

The improvements on US Route 219 are needed to encourage economic development in the Southern Tier of New York; remove truck traffic from Villages and Hamlets; and promote regional accessibility within Western New York.

Alternatives under consideration include (1) taking no action; (2) widening the existing two-lane to four where necessary; and (3) constructing a four-lane, limited access highway on new alignment. Incorporated into and studied with the various build alternative will be design variation of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A series of public information meetings will be held in Springville, Ellicottville, and Salamanca between November 1994 and November 1995. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment. Formal NEPA scoping meetings will be held at the following locations and times.

December 5, 1994—7:00 p.m., Scoping Meeting, Springville-Griffith Institute High School—Aud., 290 North Buffalo Street, Springville, New York 14141-1393

December 7, 1994—7:00 p.m., Scoping Meeting, Salamanca High School—Auditorium, 15 Iroquois Drive, Salamanca, New York 14779

December 8, 1994—7:00 p.m., Scoping Meeting, Ellicottville Central School, Cafeteria, 5973 Route 219, Ellicottville, New York 14731-9719.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues

identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

Issued on: November 4, 1994.

**Harold J. Brown,**

*Division Administrator, Federal Highway Administration, Albany, New York.*

[FR Doc. 94-28342 Filed 11-17-94; 8:45 am]

BILLING CODE 4910-22-M

### Federal Railroad Administration

[FRA General Docket No. H-94-6]

#### Test Program and Public Hearing Involving Remotely Controlled Locomotives

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of test program and public hearing.

**SUMMARY:** FRA is planning to conduct a test program of rail operations involving use of remotely controlled locomotives to evaluate the safety of this new technology in which a person can operate a locomotive by means of a radio remote-control device while not physically within the confines of a locomotive cab.

**FOR FURTHER INFORMATION CONTACT:** Rolf Mowatt-Larssen, Chief of Motive Power and Equipment Division, Office of Safety (RRS-14), Federal Railroad Administration, 400 7th Street, SW., Washington, DC 20590 (telephone: 202-366-4094).

**SUPPLEMENTARY INFORMATION:** Pursuant to 49 CFR 211.51, FRA will conduct a nation-wide test of rail operations involving remotely controlled locomotives (operations in which a person located outside a locomotive cab operates a locomotive by means of a radio remote-control device). The purpose of the test is to determine under what conditions locomotives can be operated from outside the cab of a locomotive by means of one of several different types of remote-control devices, with the level of safety required by § 2 of the Locomotive Inspection Act (45 U.S.C. § 23) and § 229.7 of the Locomotive Safety Standards (49 CFR 229.7), which incorporates that statutory provision. Section 2 of the Locomotive Inspection Act states that it is

Unlawful for any railroad to use or permit to be used on its line any locomotive unless said locomotive, its boiler, tender, and all parts and appurtenances thereof are in proper

condition and safe to operate in the service to which they are put.

FRA considers a remote-control device used to operate a locomotive to be a "part or appurtenance" within the meaning of the Locomotive Inspection Act.

In addition to raising overall safety concerns, remote-control operations raise issues of possible technical noncompliance with certain Federal railroad safety standards inasmuch as the technology in question was not in use when the regulations were issued.

The Wheeling and Lake Erie Railway Company (W&LE) has submitted a petition to FRA requesting waivers of certain provisions of the Federal rail safety regulations in order to use remote-control devices in rail operations. FRA Docket Numbers LI-92-6 and RSOP-92-1, 59 FR 4454 (January 14, 1993). In addition to reviewing the various regulations from which W&LE requested relief, FRA reviewed W&LE's remote-control operations in light of compliance with § 2 of the Locomotive Inspection Act (45 U.S.C. § 23) and § 229.7 of the Locomotive Safety Standards (49 CFR 229.7), which incorporates that statutory provision.

Based on an extensive FRA field investigation of the W&LE's remote-control operations, W&LE's petition to FRA, testimony presented at a public hearing held on May 11, 1993, submissions to the public docket, as well as testing performed by the Volpe Transportation Systems Center under contract to FRA, FRA has conditionally granted the W&LE a temporary waiver. A copy of the approval letter is contained in Appendix A to this notice.

While FRA has extensively reviewed the remote-control operations of the W&LE, other railroads throughout the country have begun to use remote-control technologies without similar FRA review. Because there are different remote-control transmitters and receivers made by a number of manufacturers and various railroads use those remote-control devices in various operational settings, conditions associated with W&LE's use of the devices may or may not be appropriate to other carriers.

FRA needs to assure that continued use of this new technology does not create a safety risk to railroad employees or the public. FRA also does not want to hinder the development of new technologies which may be of benefit to the rail industry. Thus, FRA has chosen to permit continued use of remote control systems subject to appropriate safety conditions, while a two-year

study of such use is underway. At the conclusion of the two-year period, FRA will be in a better position to evaluate the necessity and, if appropriate, content of permanent safety requirements for remote control use.

All railroads using such remote-control systems will be permitted to continue using such systems only if they participate in the long-term test, so that FRA can evaluate remote control operations in light of the regulatory and statutory obligations imposed upon all railroads. Enrollment will be necessary for waiver of those provisions of 49 CFR Part 229 that present technical barriers to remote-control operation.

FRA will conduct the test in accordance with the guidelines set forth in Appendix B. FRA seeks the comments of all parties interested in the test program prior to taking final action. All interested parties are invited to participate in this proceeding through written submissions or by participating in an informal hearing to discuss the test has been scheduled for 9:30 a.m. on January 11, 1995 in Room 2230, 400 Seventh Street, SW., Washington, DC 20590. All written communications concerning this test program should reference "FRA General Docket No. H-94-6" and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Room 8201, FRA, 400 Seventh Street, SW., Washington, DC 20590.

Comments received by January 18, 1995 will be considered before final action is taken. All comments received will be available for examination during regular working hours in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on November 9, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

#### Appendix A

November 9, 1994.

Arthur E. Korkosz, Esq.,

Squire, Sanders & Dempsey, 4900 Society Center, Cleveland, Ohio 44114-1304.

Re: FRA Docket Nos. LI-92-6 and RSOP-92-1

Dear Mr. Korkosz: This is in response to the petition on behalf of the Wheeling and Lake Erie Railway Company (W&LE) for waivers of various Federal Railroad Administration (FRA) rail safety regulations pertaining to W&LE's use of remotely controlled locomotives. FRA has reviewed in detail the operation of remotely controlled locomotives on the W&LE. That operation raises issues of technical noncompliance with various regulations as a result of the fact that the technology in question was not in

use when the regulations were drafted.<sup>1</sup> In addition, certain aspects of the operation raise safety concerns which are not addressed by existing regulations. Irrespective of the absence of regulatory provisions addressing specific locomotive features or appurtenances, railroads are required to use only locomotives and appurtenances that are safe to operate in the service to which they are put. Section 2 of the Locomotive Inspection Act, states in part:

\* \* \* it shall be unlawful for any railroad to use or permit to be used on its line any locomotive unless said locomotive, its boiler, tender, and all parts and appurtenances thereof are in proper condition and safe to operate in the service to which the same are put, that the same may be employed in the active service of such railroad without unnecessary peril to life or limb \* \* \*.

45 U.S.C. § 23. See also 49 CFR § 229.7(a)(1).

In making its determination regarding W&LE's petition, FRA has reviewed the petition, testimony presented at a public hearing held on May 11, 1993, and submissions to the public docket. FRA has also relied on its own staff of railroad safety experts as well as testing performed by the Volpe Transportation Systems Center under contract to FRA.

Based on the above, FRA is dismissing FRA Docket No. RSOP-92-1 inasmuch as the operation of remotely controlled locomotives does not by itself violate 49 CFR Part 218, Subpart B ("Blue Signal Protection of Workers"). FRA is granting your request for a waiver of rail safety regulations under FRA Docket No. LI-92-6 for a period of two years subject to the conditions listed in the enclosure to this letter. FRA reserves the right to amend or revoke this approval based on non-compliance or based on new information pertaining to the safety of the system. During this two-year period FRA will also be conducting a test program, and together with its contractors, will be reviewing remote-control operations and technology on the W&LE and other railroads using similar technology. A notice of the test program is being published in the *Federal Register*. In that notice, FRA is encouraging all other railroads presently using remote-control locomotives to join with FRA in evaluating these systems.

At the conclusion of the test period, FRA will be in a better position to evaluate the necessity and, if appropriate, content of permanent safety requirements for use of remote-control devices.

<sup>1</sup> It has been argued that section 1 of the first Safety Appliance Act (45 U.S.C. § 1) (hereinafter, "Section 1") prohibits use of a locomotive without an engineer physically present in the cab. Section 1 does not require the presence of an engineer on the locomotive. Section 1 does make it unlawful to run a train with an insufficient number of cars equipped with power or train brakes or to use a locomotive not equipped with an independent power brake and with appliances for operating the train brakes. This provision in Section 1, while referring to an "engineer on the locomotive" clearly does not require that an engineer be on the locomotive; the subjects of that provision, and the only actions made unlawful, are the operation of a train without an insufficient number of adequately equipped cars and the use of a locomotive unequipped with an independent power brake or appliances for operating the train brakes.

Sincerely,  
Phil Olekszyk,

Acting Deputy Associate Administrator for  
Safety Compliance and Program  
Implementation, Federal Railroad  
Administration, U.S. Department of  
Transportation.

#### Wheeling & Lake Erie Railway Company

##### Remote-control Locomotives

The waivers granted under FRA Docket No. LI-92-6 are subject to the conditions set forth in this document. FRA reserves the right to amend to revoke this approval based on non-compliance or based on new information pertaining to the safety of the system.

##### A. Design Requirements

1. Each remote-control transmitter shall, at a minimum, have the capability of controlling the following locomotive functions:

- a. directional control;
- b. graduated throttle control;
- c. graduated independent locomotive brake application and release;
- d. graduated automatic train brake application and release;
- e. audible warning device control;
- f. audible bell control, if equipped;
- g. sand control; and
- h. headlight control.

2. Each remote-control transmitter shall control only the locomotive equipped with a remote-control receiver assigned to that transmitter.

3. Each locomotive equipped with a remote-control receiver shall respond only to the remote-control transmitter assigned to that receiver.

4. A remote-control transmitter having the capability to control more than one locomotive receiver shall have a lockable selector switch.

5. A service brake application by use of the remote-control transmitter shall cause a service application of the locomotive and train brakes.

6. When a remote-control transmitter's radio signal to the locomotive receiver is interrupted for a set period not to exceed five seconds, the remote-control system shall cause:

- a. application of the locomotive and train brakes,
- b. return of the diesel engine to idle, and
- c. termination of the main generator/alternator electrical output.

7. If a remote-control transmitter is equipped with an "on" and "off" switch, the switch, when moved from "on" to "off" position, shall result in:

- a. application of the locomotive and train brakes,
- b. return of the diesel engine to idle, and
- c. termination of the main generator/alternator electrical output.

8. Each locomotive equipped for remote-control operation shall audibly or visibly indicate to nearby personnel that the locomotive is under active remote-control and subject to movement.

9. Each remote-control transmitter shall be equipped with an active safety switch requiring manual resetting or its equivalent. It shall incorporate a timing sequence not to

exceed 60 seconds. Failure to reset the switch within the timing sequence shall result in:

- a. application of the locomotive and train brakes,
- b. return of the diesel engine to idle,
- c. termination of the main generator/alternator electrical output, and
- d. sounding of the horn continuously or in short blasts.

10. Each remote-control transmitter shall have a two-second delay feature that when tilted 45 degrees in any direction shall result in:

- a. application of the locomotive and train brakes,
- b. return of the diesel engine to idle,
- c. termination of the main generator/alternator electrical output, and
- d. sounding of the horn continuously or in short blasts.

11. If the locomotive's main air reservoir pressure falls below 80 psi when the locomotive is in remote operation, the following shall automatically occur:

- a. application of the locomotive and train brakes,
- b. return of the diesel engine to idle, and
- c. termination of the main generator/alternator electrical output.

12. In remote operation, any attempt to apply the brakes or move the throttle on the locomotive control stand will automatically result in:

- a. application of the locomotive and train brakes,
- b. return of the diesel engine to idle, and
- c. termination of the main generator/alternator electrical output.

13. When the air valves and the electrical selector switch on the locomotive's remote control receiver equipment are moved from manual to remote or remote to manual modes, an emergency application of the locomotive and train brakes shall be initiated.

14. Measurements of electric and magnetic fields emitted by the remote-control transmitter shall conform to American National Standards Institute Safety Levels with Respect to Human Exposure to Radio-Frequency Electromagnetic Fields, 300 Khz to 100 GHz" (ANSI/IEEE c95.1-1991).

##### B. Training Requirements

1. A training program for initial and continuing education for operators of remote-control locomotives shall be established. Training programs established in conformity with 49 CFR Part 240 shall be modified to include appropriate training for operation of remote-control locomotives and systems.

2. Each person operating a remote-control locomotive (irrespective of whether that locomotive service requires that the operator be certified in accordance with 49 CFR Part 240) shall have successfully completed appropriate classroom and hands-on training regarding safety and operations of the remote-control locomotive and system.

##### C. Standard Operating Procedures

1. W&LE shall establish written standard operating procedures tailored to its remote-control operation and shall include the following provisions:

- a. Each defective condition in the remote-control system shall be immediately reported to a designated railroad official.

b. Each defective condition in a remote-control system shall be corrected before the locomotive is permitted to continue or be used in remote-control service.

c. Repairs, modifications, or adjustments to any component of the remote-control system shall be made by a qualified person.

d. W&LE shall immediately report by telephone to the FRA Regional Office or, after business hours, to the National Response Center whenever a derailment or personal injury occurs involving the remote-control system. W&LE shall maintain a record of all defective conditions and all accidents/incidents (irrespective of the reporting threshold under 49 CFR Part 225) involving the remote-control system. Such records shall be retained for at least 36 months.

e. Upon going off duty, each operator shall place the remote-control locomotive in manual operation.

f. When operating a locomotive by remote-control, the operator shall not:

- i. ride on a freight car;
- ii. ride on the locomotive's walkway or steps when the speed of the locomotive is in excess of 10 mph; or
- iii. stand or walk within the gage of the rail while in front of the lead car or locomotive.

g. The maximum authorized speed of a remote-control locomotive being operated from outside the cab is 10 mph.

h. When moving a group of cars for switching or placement purposes, the remote-control operator shall assume a position to observe the leading end of the movement.

i. The operator shall operate only one remote-control locomotive consist from the remote-control transmitter, and shall not simultaneously operate any other locomotive consist.

j. Prior to lining a switch or performing any duty that requires going on, under, or between cars, the operator shall fully apply the brakes on the locomotive and train.

k. When operating a remote-control locomotive in the remote mode in road service, the operator shall at all times remain in the cab.

l. A remotely controlled locomotive operated from outside the cab by a one-person crew shall not operate outside the confines of a geographical yard, an industry, an industrial park, or a lead into such facility when other railroad employees are not in close proximity to the train movement.

m. A remote-control locomotive operated by a one-person crew shall be segregated from other locomotives or crews operating in the same yard or facility.

n. Movements past any signal, through an interlocking, or over highway-rail crossings shall be made only when the remote-control operator, or another crewmember who can signal or communicate with the operator, has taken a position at the leading end of the movement.

o. When operating a remote-control locomotive in the remote mode, the operator shall bring the locomotive to a full stop before the locomotive direction is changed.

q. Passenger trains shall not be operated by use of a remote-control device.

r. Each operator of a remote-control locomotive shall be equipped with an operative holstered hand-held radio

equipped with a wired remote microphone by which the operator may communicate with another railroad employee.

s. In the event that a train is stopped on a grade, a sufficient number of handbrakes must be set to hold the train.

2. W&LE shall adopt operating rules for remote-control locomotives that address:

a. the maximum number of cars that can be handled at one time and

b. how protection will be provided for maintenance-of-way and signal employees in locations where remote-control locomotives are operating.

3. W&LE shall submit its standard operating procedures to the FRA.

4. W&LE shall comply with the standard operating procedures listed above.

#### D. Security

1. The remote-control transmitter shall be stored in a secure location when not in the operator's possession.

2. The issuance of a remote-control transmitter shall be the responsibility of a designated railroad official who shall keep accurate records of the assignment of each remote-control transmitter.

3. Ability to access the selector switch on a remote-control transmitter having the capability to control more than one locomotive receiver shall be limited to one designated railroad official during each shift.

#### E. Inspections and Tests

1. Each remote-control system shall be included as part of the calendar day inspection required by 49 CFR 229.21.

2. Each operator upon going on duty, or before using the locomotive in the remote-control mode for the first time during the operator's shift, shall cut out the manual operation of the locomotive and set up and test the remote-control transmitter to determine that:

a. the control stand gauges and the load meter function properly in accordance with

the commands from the remote-control transmitter;

b. the locomotive responds to the transmitter controls of reverser and throttle;

d. the locomotive brakes function properly from the transmitter;

e. the headlight, horn, and bell function properly from the transmitter;

f. the transmitter tilt mechanism functions properly;

g. the transmitter tilt nullifying switch when placed in the "off" position, applies the locomotive brake; and

h. the active safety switch reset does not exceed 60 seconds.

#### F. Notification of Use and Protection of Workers

1. Prior to leaving the locomotive cab to operate the locomotive from a position other than in or on the locomotive, the operator of the locomotive shall affix a clearly visible tag to the throttle or automatic brake valve handle indicating that the locomotive is in remote-control operation. This tag shall be removed by the operator of the remote-control of the locomotive whenever the locomotive is no longer operated by remote-control.

2. Whenever a worker as described in 49 CFR Part 218, Subpart B, Blue Signal Protection of Workers, is required to work on, under, or between the locomotive and/or train in remote-control operation, the worker shall require the remote-control operator to remove the remote-control tag from the throttle and restore the locomotive to manual operation. The worker shall then attach a blue signal to the throttle before commencing work.

3. When the worker has completed work on the locomotive or train, the worker shall remove the blue signal and inform the remote-control operator that he is off the locomotive or train. The remote-control operator shall then comply with requirements of section F.1. above before

commencing use of the locomotive in remote-control operations.

#### Appendix B

##### Test Program

Railroads operating on the general railroad system of transportation using remote-control devices in which the lead locomotive is controlled from outside the cab by means of a radio transmitter are strongly encouraged to enroll in the test program:

1. Railroads participating in the test program shall inform the Associate Administrator for Safety, 400 Seventh Street, SW., Washington, DC 20590.

2. Participating railroads agree to conform to the same conditions as those contained in Appendix A.

3. If a participating railroad is unable to conform to any of the conditions contained in Appendix A, it shall submit for FRA's review and acceptance alternative safety conditions.

a. In the event the design of a remote-control system being used by the participating railroads does not permit conformity with the requirements contained in Appendix A, the railroad shall indicate (i) which design requirement is different and (ii) how an equivalent level of safety is achieved by the device being used by the railroad.

b. In the event a participating railroad does not wish to comply with a condition contained in sections B through G of Appendix A, the railroad should specify the condition and indicate how an equivalent level of safety is achieved by the railroad's alternative condition.

4. Acceptance by FRA for participation in this test constitutes a waiver of applicable Railroad Locomotive Safety Standards (49 CFR Part 229) subject to compliance with the above conditions.

[FR Doc. 94-28490 Filed 11-17-94; 8:45 am]

BILLING CODE 4910-06-M

# Sunshine Act Meetings

Federal Register

Vol. 59, No. 222

Friday, November 18, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, November 22, 1994, to consider the following matters:

#### Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Memorandum re: Request to purchase laptop computers.

Memorandum re: Maintenance of automated information systems.

Memorandum re: Contract to procure new and enhanced multi-processor network server platforms.

Memorandum and resolution re: Proposed amendments to Part 308 of the Corporation's rules and regulations, entitled "Rules of Practice and Procedure," which would clarify that the rules' provisions relating to ex parte communications conform to the requirements of the Administrative Procedure Act and, in particular, that the ex parte provisions do not apply to intra-agency communications, which are governed by a separate provision of the Administrative Procedure Act.

Memorandum re: Third Quarter 1994 Financial Management Report.

#### Discussion Agenda

Memorandum and resolution re: Final amendments to Part 303 and 333 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," and "Extension of Corporate Powers," respectively, which require Corporation-insured mutual state-chartered savings banks that are not members of the Federal Reserve System that propose to convert to stock ownership to (1) file with the Corporation a notice of intent to convert to stock form consisting of a description of the

proposed conversion accompanied by a copy of all documentation and application materials filed with the applicable state and federal regulators; and (2) comply with new substantive provisions of the Corporation's regulations when proposing to convert to the stock form of ownership.

Memorandum and resolution re: Final amendments to Part 330 of the Corporation's rules and regulations, entitled "Deposit Insurance Coverage," which (1) require that certain written disclosures be made by insured depository institutions to employee benefit plan depositors in certain situations in order to reduce the uncertainty about whether such accounts are eligible for "pass-through" deposit insurance coverage and to provide a timely disclosure to such depositors when such coverage no longer is available; and (2) make two technical amendments to Part 330 involving the insurance rules for joint accounts and the accounts for which an insured depository institution is acting as a fiduciary.

Memorandum and resolution re: Final amendments to Part 346 of the Corporation's rules and regulations, entitled "Foreign Banks," which set forth application procedures for the Corporation's permission for an insured state branch to engage in, or continue, an activity which is not permissible for a federal branch.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942-3132 (Voice); (202) 942-3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Acting Executive Secretary of the Corporation, at (202) 898-6757.

Dated: November 15, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94-28665 Filed 11-16-94; 12:45 pm]

BILLING CODE 6714-01-M

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, November 23, 1994, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street

entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Closed.

### MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

### CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 16, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-28647 Filed 11-16-94; 12:45 pm]

BILLING CODE 6210-01-P

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 9:30 a.m., Wednesday, November 23, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, DC 20551.

STATUS: Open.

### MATTERS TO BE CONSIDERED:

#### Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Publication for comment of proposed amendments to Regulation E (Electronic Fund Transfers) regarding identification of consumer accounts on terminal receipts at automated teller machines (ATMs).

2. Proposed amendments to the Board's risk-based capital guidelines to recognize the risk-reducing benefits of netting arrangements (proposed earlier for public comment; Docket No. R-0837).

3. Publication for comment of proposed amendments to Regulation Z (Truth in Lending) to implement The Home Ownership and Equity Protection Act of 1994.

4. Proposed amendments to Regulation C (Home Mortgage Disclosure) to facilitate availability of public HMDA disclosures and

improve the quality of HMDA data (proposed earlier for public comment; Docket No. R-0839).

#### Discussion Agenda

5. Proposed 1995 Federal Reserve Board budget.
6. Proposed 1995 budget for the Office of Inspector General.
7. Any items carried forward from a previously announced meeting.

**Note:** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 16, 1994.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 94-28648 Filed 11-16-94; 12:45 pm]

BILLING CODE 6210-01-P

#### COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

**"Federal Register" Citation of Previous Announcement:** 59 FR 56113, November 10, 1994.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 3 p.m., November 15, 1994.

**CHANGES IN THE MEETING:** Deletion of the following open item from the agenda:

Proposed changes to actuarial assumptions and related delegation to the Committee on Employee Benefits.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 15, 1994.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 94-28649 Filed 11-16-94; 12:45 pm]

BILLING CODE 6210-01-P

#### NATIONAL LABOR RELATIONS BOARD

**TIME AND DATE:** 12 p.m., Wednesday, November 9, 1994.

**PLACE:** 11th Floor, 1099 14th St., NW, Washington, DC 20570.

**STATUS:** Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (matters relating solely to the internal personnel rules and practices of the Agency)

**MATTERS CONSIDERED:** Case Handling Procedures.

**CONTACT PERSON FOR MORE INFORMATION:** John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 273-1934.

Dated, Washington, D.C., November 10, 1994.

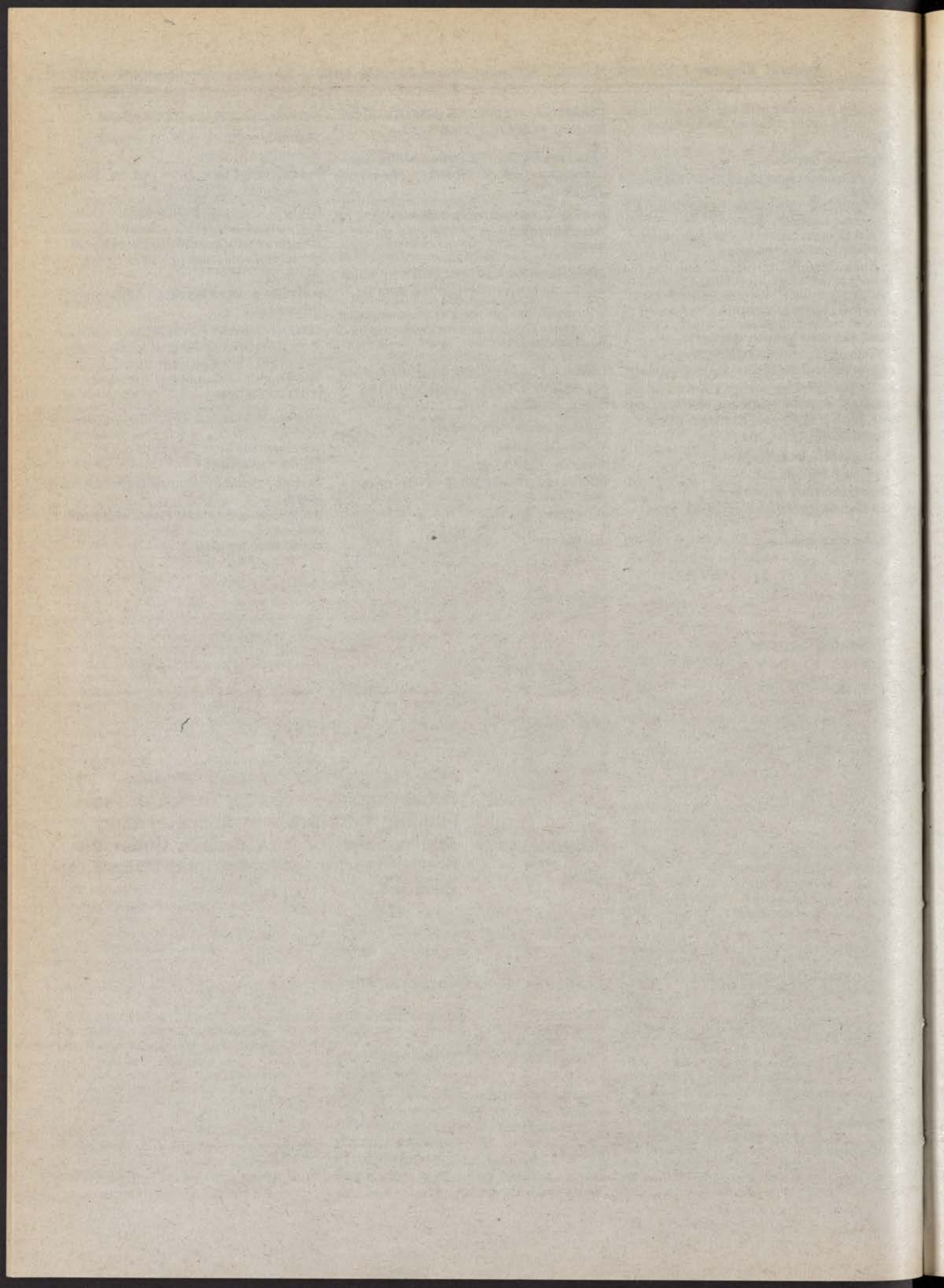
By direction of the Board:

**John C. Truesdale,**

*Executive Secretary, National Labor Relations Board.*

[FR Doc. 94-28639 Filed 11-16-94; 12:45 pm]

BILLING CODE 7545-01-M



Department of Education

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Friday  
November 18, 1994

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**Part II**

**Department of  
Education**

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**National Institute on Disability and  
Rehabilitation Research; Notice of Final  
Funding Priorities and Notice Inviting  
Applications for New Awards Under the  
Knowledge Dissemination and Utilization  
Program**

## DEPARTMENT OF EDUCATION

## National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1995-1996 for the knowledge dissemination and utilization program.

**SUMMARY:** The Secretary announces final funding priorities for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1995-1996. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

**EFFECTIVE DATE:** These priorities take effect on December 19, 1994.

**FOR FURTHER INFORMATION CONTACT:**

David Esquith, U.S. Department of Education, 600 Independence Avenue SW., Switzer Building, Room 3424, Washington, D.C. 20202-2601. Telephone: (202) 205-8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-5516.

**SUPPLEMENTARY INFORMATION:** This notice contains two final priorities under the D&U program. The priorities are in the areas of disability research dissemination and accessible data.

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) and 204(b)(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760-762). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education and Indian tribes or tribal organizations.

These final priorities support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 355.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

On September 7, 1994, the Secretary published a notice of proposed priorities in the *Federal Register* (59 FR 46300).

The Department of Education received five letters commenting on the proposed priorities. One modification was made to the priorities as a result of those comments. The comments, and

the Secretary's responses, are discussed in an appendix to this notice.

**Note:** This notice of final priorities does not solicit applications. A notice inviting applications under this competition will be published in the *Federal Register* concurrent with or following publication of the notice of final priorities.

**Priority**

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this program only applications that meet these absolute priorities:

**Priority 1: Center for the Dissemination of Disability Research**

Section 200(4)(A) of Rehabilitation Act of 1973, as amended requires that NIDRR "ensure the widespread distribution, in usable formats, of practical scientific and technological information generated by research, demonstration projects, training, and related activities." This priority calls for a center that can assist NIDRR grantees to better disseminate the results of their research, including increasing the accessibility of research information to those who need alternate formats.

Researchers usually report research findings through professional meetings and publications. In order to expand dissemination of research findings to other audiences, including rehabilitation professionals, individuals with disabilities, and other interested parties, researchers may need technical assistance and training. Research is needed to understand the reasons why persons are not utilizing information from NIDRR-sponsored research (e.g., unfamiliarity with terminology, inability to utilize the medium, or the lack of availability of the traditional research publications).

A body of literature currently exists concerning best practices for information dissemination (see Backer, "Knowledge: Creation, Diffusion, Utilization," Vol. 12, Number 3, March 1991, Sage Publications). Through a model project, this Center will evaluate the effectiveness of these recommended practices and assist researchers to develop strategies they can use to determine the best formats and methods to disseminate their research findings to all appropriate audiences.

The Center shall support all of the costs associated with the pilot project described below.

**Priority**

A D&U Center for the dissemination of disability research shall—

- Identify the format, availability, accessibility (including electronic accessibility), and obstacles to utilization of disability research faced by a wide range of potential target audiences, including, but not limited to, persons with disabilities and their families, advocacy organizations, researchers, policymakers at the local, State and Federal level, journalists, and disability-related service providers;

- Identify unique issues of disability research information dissemination that apply to persons from minority backgrounds and develop strategies to address those issues;

- Identify and develop dissemination strategies that disability researchers can use to identify all appropriate target audiences, understand the audiences' interests and needs, and disseminate the appropriate information to all target audiences using each audience's preferred information medium;

- Identify, develop, and distribute to all NIDRR grantees, the Office of Special Education Programs (OSEP), the Rehabilitation Services Administration (RSA), and the National Rehabilitation Information Center (NARIC), technical assistance materials that address format, availability, accessibility, and dissemination strategies in order to assist the grantees to disseminate their research findings as effectively as possible to all appropriate audiences;

- Respond to technical questions and requests for technical assistance on dissemination from all NIDRR grantees and provide training to the project directors at their annual meeting;

- Develop (within six months after the award), implement (beginning within 12 months after the award), and evaluate (beginning 24 months after the award) a pilot dissemination project that solicits nominations of research results from NIDRR's Rehabilitation Research and Training Center Program grantees, Rehabilitation Engineering Research Center Program grantees, Field-initiated Research Program grantees, and Research and Demonstration Program grantees, selects a wide range of those research products (at least one set of products from each of the programs listed above), and disseminates those findings to all appropriate target audiences using a wide range of formats and media in order to ensure maximum availability, accessibility, and utility; and

- Provide all of NIDRR's grantees, OSEP, RSA, and NARIC with a quarterly newsletter providing them with technical assistance on research information dissemination.

## Priority 2: Improving Access to Disability Data

### Background

Demographic data and statistical information on disability are extremely valuable in assisting the Nation in understanding the scope of disability issues in America, developing disability policy, and planning, conducting, and evaluating services for individuals with disabilities. Legislators, policymakers, service providers, and advocates—as well as manufacturers and retailers—require information on the incidence and prevalence of disability conditions, the distribution of disability conditions among the population, and the characteristics of individuals with disabilities. This information is needed in order to develop policy, and plan, administer, and evaluate programs, including health care programs; assess market demand for goods and services; estimate demand for and the costs of public services; and evaluate the effectiveness of society's efforts to promote disability prevention, rehabilitation, community integration and inclusion, and protect the civil rights of individuals with disabilities.

Data on disability are collected and produced by many groups. The variety of statutory authorities for the collection of public data sets, the absence of any mandate or resources for comprehensive demographic studies of disability, and an inconsistently applied definition of disability have resulted in fragmented, incomplete, and inconsistent data sets about individuals with disability. One byproduct of this situation has been the focus on explorations and reconciliations to make these data more useful for further research.

Yet legislators and program administrators, advocates and journalists continue to use "data"—numbers, estimates, projections, and "best guesses"—as the basis for policy decisions and assessments. It is important that the estimates used be accurate and that their users understand the implications of the data. Underestimates of certain conditions or populations may result in failure to plan and provide resources for adequate services; overestimation makes it impossible to assess the real effectiveness of laws or programs and may discourage efforts to address certain problems for fear of overwhelming costs.

There is a need for presentation of data in meaningful, understandable, and accessible formats usable by persons with a range of educational levels and technical skills, sensory disabilities, languages, and cognitive abilities. There

is also a need to make disability data available to the broad range of target audiences referred to above.

NIDRR has attempted to address many of the problems of unsatisfactory databases and the need to increase understanding of the demography of disability by supporting research projects and centers that primarily compile and analyze data and train researchers and statisticians. This scholarly effort has not addressed sufficiently the widespread dissemination of data that is presented in useful, meaningful, and accessible formats for a variety of audiences not experienced in the nuances of data interpretation. Further, NIDRR's data research program has, almost of necessity, been focused on data that relate to health conditions and health care needs.

NIDRR also has identified a need to improve the ability of individuals with disabilities and their parents, persons from minority backgrounds with disabilities, family members, guardians, advocates, or authorized representatives of the individuals to access information. In addition, many persons with disabilities need comprehension aids that will allow them to understand and utilize the information they access.

The project on access to disability data will focus on the synthesis, interpretation, presentation, and dissemination of statistical information on disability to a wide target audience. It will provide training in the interpretation and use of disability data to individuals with disabilities and their organizations, and will involve individuals with disabilities in the identification of information needs and channels of access, evaluation of the materials prepared in the project, and dissemination of products.

### Priority

A D&U project on improving access to disability data shall—

- Assess the needs of a range of target audiences for specific types of disability data and the availability of such data;
- Identify the most effective channels and formats for conveying information to various target populations, including individuals with various types of disabilities, those associated with special communication needs, and individuals who are members of minority or traditionally underserved groups;
- Identify and define the nature of the access problems to disability data faced by various segments of the target population;
- Identify, collect, summarize, repackage, and disseminate selected

disability statistics (proposed by the applicant) in a number of formats and through a number of media that will most effectively reach various segments of the target population, and evaluate the effectiveness of the selected mechanisms;

- Develop innovative and attractive informational products in a variety of accessible formats; develop guidelines for the dissemination of these materials, and provide training to relevant target populations in the use and dissemination of the materials;

- Develop, test, and market innovative uses of information technologies, including on-line data services, 800 numbers, and a system for reimbursable data services, as appropriate;

- Assess the need for and, if necessary, develop informational materials to facilitate the use of disability data derived from State and local entities by legislators, policy makers, service providers, advocates, manufacturers and retailers;

- Coordinate with other OSERS-supported and other Federal agency data dissemination activities to avoid duplication of effort; and

- Maintain all print materials created in full 3½" disk format in Word Perfect 5.2 for IBM, Microsoft Word 5 for Macintosh, and ASCII format for easier translation into Braille and for read back using a screen reader, and maintain a library and on-line database of all products.

**Applicable Program Regulations:** 34 CFR Parts 350 and 355.

**Program Authority:** 29 U.S.C. 760-762.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Dated: November 10, 1994.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

### Appendix

#### *Analysis of Comments and Changes*

By the deadline date, the Department received five comments in response to the proposed priorities. Two additional comments were received after the deadline date and were not considered in this response. Four of the five letters supported the priorities. This Appendix contains an analysis of the comments and the changes in the priority since the publication of the notice of proposed priority. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

**Priority 1: Center for the Dissemination of Disability Research**

**Comment:** One commenter did not support the establishment of the Center because of the increasing availability of electronic databases and "the numerous periodicals that convert research data to practical information for teachers, rehabilitation counselors, parents, and others." The commenter indicated that the funds to support the Center would be better spent on disability research.

**Discussion:** The Secretary does not believe that key audiences for disability research such as teachers, rehabilitation counselors, and parents are utilizing disability research to the maximum extent possible despite evolution of electronic information systems. The Secretary expects the Center to conduct research on information dissemination in order to enable persons with disabilities and their families to benefit from disability research.

**Changes:** None.

**Comment:** One commenter recommended focusing the Center on identifying the needs of target audiences for disability research.

**Discussion:** The Secretary agrees that understanding and responding to the target audiences' needs are fundamental steps in the successful dissemination of all disability research. The Secretary points out that the third activity of the Center requires it to identify and develop dissemination strategies that disability researchers can use to identify all appropriate target audiences, understand the audiences' interests and needs, and disseminate the appropriate information to all target audiences using each audience's preferred information medium (emphasis added). The Secretary does not believe any further requirements are necessary.

**Changes:** None.

**Comment:** One commenter recommended requiring the Center to

examine dissemination methods of agencies and organizations involved in similar research and dissemination activities and to share its findings with other agencies and organizations.

**Discussion:** In order to meet the selection criteria (see 34 CFR 350.34(c)), the Secretary believes that all applicants for the Center are required to propose how the project will examine the broad range of important topics in the field of disability research dissemination. The Secretary does not believe any further requirements are necessary in order to ensure that the Center examines the dissemination methods of agencies and organizations involved in similar research and dissemination activities.

The Secretary agrees with the commenter's second recommendation that the Center should share information with agencies and organizations in addition to sharing information with NIDRR grantees.

**Changes:** The priority has been revised to require the Center to distribute technical assistance materials and a copy of its quarterly newsletter to OSEP, RSA, and NARIC. The Secretary expects OSEP and RSA to share the Center's newsletter with its staff and grantees as appropriate.

**Priority 2: Improving Access to Disability Data**

**Comment:** Two commenters recommended various types of data that should be addressed by the grantee. For example, one commenter recommended revising the first activity of the priority to require the grantee to include data on infants, toddlers, children, and youth with disabilities in the needs assessment.

**Discussion:** The Secretary believes that applicants should have the discretion to propose to include any type of disability data. The application review process will determine the merits of each proposal. The Secretary

declines to specify further the types of data that will be addressed by the grantee.

**Changes:** None.

[FR Doc. 94-28477 Filed 11-17-94; 8:45 am]

BILLING CODE 4000-01-P

**Office of Special Education and Rehabilitative Services**

[CFDA No.: 84.133D]

**National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Knowledge Dissemination and Utilization Program for Fiscal Year (FY) 1995**

**Note to Applicants:** This notice is a complete application package. The notice contains information, application forms, and instructions needed to apply for a grant under this competition. The final priorities for the Knowledge Dissemination and Utilization program are published in this issue of the *Federal Register*. This consolidated application package includes the closing date, estimated funding, and application forms necessary to apply for an award under this program's competition. Potential applicants should consult the statement of the final priorities published in this issue to ascertain the substantive requirements for their applications.

The estimated funding level in this notice does not bind the Department of Education to make awards or to any specific number of awards or funding levels.

**Note:** The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals from minority backgrounds who have disabilities.

**APPLICATION NOTICE FOR FISCAL YEAR 1995**

[Knowledge Dissemination and Utilization Program, CFDA No. 84.133D]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Center for the Dissemination of Disability Research .....	1/20/95	1	\$500,000	48
Improving access to disability data .....	1/20/95	1	175,000	36

Applications available: November 18, 1994.

Before your application can be reviewed, it must include this description. Applications for which this information is not received will not be reviewed.

Successful applicants that provide services to individuals with disabilities will be required to advise these individuals, or as appropriate, the parents, family guardians, advocates, or

authorized representatives of these individuals, of the availability and purposes of the State Client Assistance Program (CAP), including information on means of seeking assistance under

such programs. A list of State CAPs will be provided to successful applicants when they are notified of their award.

This notice supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

If you need further information about these requirements, please contact David Esquith at (202) 205-8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-5516.

**Applicable Regulations:** (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR parts 350 and 355; and (c) the notice of final priorities as published elsewhere in this issue of the *Federal Register*.

**Purpose of Program:** The Knowledge Dissemination and Utilization is designed to support activities that will ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and from other sources is fully utilized to improve the lives of individuals with disabilities and their families.

#### Selection Criteria

The Secretary uses the following selection criteria to evaluate applications under this program.

(a) **Potential Impact of Outcomes: Importance of Program** (Weight 3.0). The Secretary reviews each application to determine to what degree—

- (1) The proposed activity relates to the announced priority;
- (2) The research is likely to produce new and useful information (research activities only);
- (3) The need and target population are adequately defined;
- (4) The outcomes are likely to benefit the defined target populations;
- (5) The training needs are clearly defined (training activities only);
- (6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and
- (7) The need for information exists (utilization activities only).

(b) **Potential Impact of Outcomes: Dissemination/Utilization** (Weight 3.0). The Secretary reviews each application to determine to what degree—

- (1) The research results are likely to become available to others working in the field (research activities only);
- (2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) **Probability of Achieving Proposed Outcomes: Program/Project Design** (Weight 5.0). The Secretary reviews each application to determine to what degree—

- (1) The objectives of the project(s) are clearly stated;
- (2) The hypothesis is sound and based on evidence (research activities only);
- (3) The project design/methodology is likely to achieve the objectives;
- (4) The measurement methodology and analysis is sound (research and development/demonstration activities only);
- (5) The conceptual model (if used) is sound (development/ demonstration activities only);
- (6) The sample populations are correct and significant (research and development/demonstration activities only);
- (7) The human subjects are sufficiently protected (research and development/demonstration activities only);
- (8) The device(s) or model system is to be developed in an appropriate environment;
- (9) The training content is comprehensive and at an appropriate level (training activities only);
- (10) The training methods are likely to be effective (training activities only);
- (11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);
- (12) The target populations are linked to the project (utilization activities only); and
- (13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) **Probability of Achieving Proposed Outcomes: Key Personnel** (Weight 4.0). The Secretary reviews each application to determine to what degree—

- (1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;
- (2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;
- (3) All required disciplines are effectively covered;
- (4) Commitments of staff time are adequate for the project; and

(5) The applicant is likely, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

- (i) Members of racial or ethnic minority groups;
- (ii) Women;
- (iii) Handicapped persons; and
- (iv) The elderly.

(e) **Probability of Achieving Proposed Outcomes: Evaluation Plan** (Weight 1.0). The Secretary reviews each application to determine to what degree—

- (1) There is a mechanism to evaluate plans, progress and results;
- (2) The evaluation methods and objectives are likely to produce data that are quantifiable; and
- (3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) **Program/Project Management: Plan of Operation** (Weight 2.0). The Secretary reviews each application to determine to what degree—

- (1) There is an effective plan of operation that insures proper and efficient administration of the project(s);
- (2) The applicant's planned use of its resources and personnel is likely to achieve each objective;
- (3) Collaboration between institutions, if proposed, is likely to be effective; and
- (4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

- (i) Members of racial or ethnic minority groups;
- (ii) Women;
- (iii) Handicapped persons; and
- (iv) The elderly.

(g) **Program/Project Management: Adequacy of Resources** (Weight 1.0). The Secretary reviews each application to determine to what degree—

- (1) The facilities planned for use are adequate;
- (2) The equipment and supplies planned for use are adequate; and
- (3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) **Program/Project Management: Budget and Cost Effectiveness** (Weight 1.0). The Secretary reviews each application to determine to what degree—

- (1) The budget for the project(s) is adequate to support the activities;
- (2) The costs are reasonable in relation to the objectives of the projects(s); and
- (3) The budget for subcontracts (if required) is detailed and appropriate.

**Eligible Applicants:** Parties eligible to apply for grants under this program are

public and private non-profit and for-profit agencies and organizations, including institutions of higher education and Indian tribes and tribal organizations.

**Program Authority:** 29 U.S.C. 761a and 762.

#### Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

#### Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

**Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.**

**Part II: Budget Form—Non-Construction Programs (Standard Form 524) and instructions.**

**Part III: Application Narrative. Additional Materials**

**Estimated Public Reporting Burden.**

**Assurances—Non-Construction Programs (Standard Form 424B).**

**Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED Form 80-0013).**

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form ED 80-0014) and instructions. (NOTE: ED Form ED-80-0014 is intended for the use of primary participants and should not be transmitted to the Department.)**

**Disclosure of Lobbying Activities (Standard Form LLL if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL-A).**

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

#### FOR FURTHER INFORMATION CONTACT:

Dianne Villines, U.S. Department of Education, Room 3417 Switzer Building, 600 Independence Avenue, S.W., Washington, D.C. 20202-2704. Telephone: (202) 205-9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**Program Authority:** 29 U.S.C. 760-762.

Dated: November 10, 1994.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

#### Appendix

##### Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

##### Frequent Questions

1. Can I get an extension of the due date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What should be included in the application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What format should be used for the application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria

vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I submit applications to more than one NIDRR program competition or more than one application to a program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the allowable indirect cost rate?

The limits on indirect costs vary according to the program and the type of application.

**Applicants in the FIR, AND** Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can profitmaking businesses apply for grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can individuals apply for Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs.

8. Can NIDRR staff advise me whether my project is of interest to NIDRR or likely to be funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I assure that my application will be referred to the most appropriate panel for review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

10. How soon after submitting my application can I find out if it will be funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should

estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I call NIDRR to find out if my application is being funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my application is successful, can I assume I will get the requested budget amount in subsequent years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

13. Will all approved applications be funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

**APPLICATION FOR  
FEDERAL ASSISTANCE**

<b>1. TYPE OF SUBMISSION:</b> Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		<b>2. DATE SUBMITTED</b>	Applicant Identifier																												
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<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> <div style="border: 1px solid black; width: 150px; height: 20px; margin: 5px 0;"></div>		<b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> <input type="checkbox"/> A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____																													
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<b>15. ESTIMATED FUNDING:</b> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">a. Federal</td> <td style="width: 10%;">\$</td> <td style="width: 10%;"></td> <td style="width: 10%;">.00</td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>c. State</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td></td> <td>.00</td> </tr> <tr> <td>g. TOTAL</td> <td>\$</td> <td></td> <td>.00</td> </tr> </table>		a. Federal	\$		.00	b. Applicant	\$		.00	c. State	\$		.00	d. Local	\$		.00	e. Other	\$		.00	f. Program Income	\$		.00	g. TOTAL	\$		.00	<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b> a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____ b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
a. Federal	\$		.00																												
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		<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b> <input type="checkbox"/> Yes    If "Yes," attach an explanation. <input type="checkbox"/> No																													
<b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED</b>																															
a. Typed Name of Authorized Representative		b. Title	c. Telephone number																												
d. Signature of Authorized Representative		e. Date Signed																													

Previous Editions Not Usable

Standard Form 424 (REV 4-88)  
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry:   | Item: | Entry:   |
|-------|--|-------|--|
| 1.    | Self-explanatory.  | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable).  | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 15.   | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5.    | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.   | 16.   | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 17.   | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| 7.    | Enter the appropriate letter in the space provided.  | 18.   | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |       |  |
| 9.    | Name of Federal agency from which assistance is being requested with this application.   |       |  |
| 10.   | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.  |       |  |
| 11.   | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.  |       |  |

## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary  
Lines 1-4, Columns (a) and (b)**

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.) (continued)**

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** — Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i** — Show the totals of Lines 6a to 6h in each column.

**Line 6j** — Show the amount of indirect cost.

**Line 6k** — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**INSTRUCTIONS FOR THE SF-424A (continued)**

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.


**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

		<b>U.S. DEPARTMENT OF EDUCATION</b> <b>BUDGET INFORMATION</b> <b>NON-CONSTRUCTION PROGRAMS</b>		OMB Control No. 1875-0102 Expiration Date: 9/30/95		
Name of Institution/Organization		Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.				
<b>SECTION A - BUDGET SUMMARY</b> <b>U.S. DEPARTMENT OF EDUCATION FUNDS</b>						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

Name of Institution/Organization		SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS					
Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.		Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
Budget Categories							
1. Personnel							
2. Fringe Benefits							
3. Travel							
4. Equipment							
5. Supplies							
6. Contractual							
7. Construction							
8. Other							
9. Total Direct Costs (lines 1-8)							
10. Indirect Costs							
11. Training Stipends							
12. Total Costs (lines 9-11)							
		SECTION C - OTHER BUDGET INFORMATION (see instructions)					

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

#### Instructions for ED Form No. 524

##### General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

##### Section A—Budget Summary: U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding

is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

##### Section B—Budget Summary: Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

##### Section C—Other Budget Information: Pay Attention to Applicable Program Specific Instructions, if Attached

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0040

**ASSURANCES — NON-CONSTRUCTION PROGRAMS**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)  
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION	DATE SUBMITTED	

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -

#### A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check ☐ if there are workplaces on file that are not identified here.

### DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

Approved by OMB  
0348-0046

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____	
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known: _____			<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known: _____		
<b>6. Federal Department/Agency:</b>			<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____		
<b>8. Federal Action Number, if known:</b>			<b>9. Award Amount, if known:</b> \$ _____		
<b>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</b>			<b>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</b>		
(attach Continuation Sheet(s) SF-LLL-A, if necessary)					
<b>11. Amount of Payment (check all that apply):</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned			<b>13. Type of Payment (check all that apply):</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____		
<b>12. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____					
<b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b>  (attach Continuation Sheet(s) SF-LLL-A, if necessary)					
<b>15. Continuation Sheet(s) SF-LLL-A attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No					
<b>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>			<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____		
<b>Federal Use Only:</b>			<b>Authorized for Local Reproduction Standard Form - LLL</b>		

**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**Approved by OMB  
0348-0046

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

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Department of Education

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Friday  
November 18, 1994

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**Part III**

**Department of  
Education**

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Office of Special Education and  
Rehabilitative Services; National Institute  
on Disability and Rehabilitation Research;  
Notice

## DEPARTMENT OF EDUCATION

## National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for fiscal years 1995-1996 for rehabilitation engineering research centers.

**SUMMARY:** The Secretary announces final funding priorities for new Rehabilitation Engineering Research Centers (RERCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1995-1996. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

**EFFECTIVE DATE:** These priorities take effect on December 19, 1994.

**FOR FURTHER INFORMATION CONTACT:**

David Esquith, U.S. Department of Education, 600 Independence Avenue, SW., Switzer Building, Room 3424, Washington, DC 20202-2601.

Telephone: (202) 205-8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-5516.

**SUPPLEMENTARY INFORMATION:** This notice contains three final priorities under the RERC program for research on children with orthopedic impairments, research on low vision and blindness, and research on universal telecommunications access.

Authority for the RERC program of NIDRR is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760-762). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

These final priorities support the National Education Goals that call for all children in America to start school ready to learn and for every adult American to possess the skills necessary to compete in a global economy.

Under the regulations for this program (see 34 CFR 353.32) the Secretary may

establish research priorities by reserving funds to support particular research activities.

On August 25, 1994, the Secretary published a notice of proposed priorities in the *Federal Register* (59 FR 44010).

The Department of Education received 50 letters commenting on the proposed priorities. A number of modifications have been made to the priorities as a result of those comments. The comments, and the Secretary's responses, are discussed in an appendix to this notice.

**Note:** This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the *Federal Register*.

*Description of the Rehabilitation Engineering Research Center Program*

RERCs carry out research or demonstration activities by: (1) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (a) solve rehabilitation problems and remove environmental barriers, and (b) study new or emerging technologies, products, or environments; (2) demonstrating and disseminating (a) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas, and (b) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or (3) facilitating service delivery systems change through (a) the development, evaluation, and dissemination of consumer-responsive and individual and family centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services, and (b) other scientific research to assist in meeting the employment and independent needs of individuals with severe disabilities.

The statute requires that each applicant for a grant, including an RERC, demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities. Each RERC must provide training opportunities to individuals, including individuals with disabilities, to become researchers of rehabilitation technology and practitioners of rehabilitation technology in conjunction with institutions of higher education and nonprofit organizations.

*General*

The following requirements apply to the RERCs pursuant to these absolute priorities unless noted otherwise:

Each applicant for an RERC must describe the coordination activities it will undertake with public and private entities conducting similar research activities in order to avoid duplication of effort and enhance its research activities.

The RERC (except the RERC on universal telecommunications access) must have a laboratory and the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to the marketplace. The RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

The RERC must provide graduate-level research training to build capacity for engineering research in the rehabilitation field and to provide training in the applications of new technology to service providers and to individuals with disabilities and their families.

The RERC must develop all training materials in formats that will be accessible to individuals with various types of disabilities and communication modes, and widely disseminate findings and products to individuals with disabilities and their families and representatives, service providers, manufacturers and distributors, and other appropriate target populations.

The RERC must involve individuals with disabilities, persons from minority backgrounds with disabilities and, if appropriate, their family members in planning and implementing the research, development, and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

The RERC must share information and data, and, as appropriate, collaborate on research and training with other NIDRR-supported grantees including, but not limited to, the Americans with Disabilities Act (ADA) Disability and Business Technical Assistance Centers and other related RERCs and RRTC's. The RERC must work closely with the RERC on Technology Evaluation and Transfer at the State University of New York at Buffalo.

*Priority*

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this competition only applications that meet these absolute priorities.

**Priority 1: Technology for Children With Orthopedic Disabilities****Background**

Children who sustain traumatic injury, congenital anomalies or disease-induced anomalies may require prosthetic devices for missing limbs and orthotic devices for support and correction. Because children are growing rapidly, their prosthetic and orthotic devices must be designed to satisfy their special developmental needs. Too often, children's devices are scaled-down versions of adult devices.

New composite materials such as graphite, carbon fiber/carbon matrix, and fiber-reinforced ceramics have much to offer in prosthetic and orthotic design and practice because they are lightweight and durable. These factors are especially important for young children. However, composite materials require different manufacturing techniques than those used to form metals. The special configurations of these devices require special construction methods to produce devices that are safe and effective and competitively priced. In addition, most composite materials are hard to re-shape once they are made. This interferes with the fitting of devices that need to be adjusted for each child. Techniques for adjusting the shape of composite material devices need to be developed.

The neuromuscular and musculoskeletal development of growing children presents a significant challenge to those practitioners who provide children with prosthetic and orthotic devices. The devices must meet the prevailing needs of the child as well as adjust to the child's physical growth for a reasonably long period of time.

Most orthotic/prosthetic facilities have difficulty meeting these challenges. This is compounded by the fact that children who need these services are not evenly distributed throughout the country, and there are few service providers in some geographic areas. In addition, some practitioners and parents have limited access to a variety of devices. As a result, they are not in a position to sample a number of devices and select the one that is most appropriate. For example, the electric hand often appeals to a parent because it looks and acts like a real hand. An experimental fitting and practical comparison may persuade parents and child that the benefits of hook design outweigh the cosmetic appeal of the electric hand. Inexpensive opportunities to try out various prostheses need to be increased.

**Priority**

An RERC on technology for children with orthopedic disabilities shall—

- Develop and evaluate prosthetic and orthotic devices (e.g., spinal orthotics as they relate to seating; upper limb and cervical orthotics as they relate to body positioning for head and arm control; and braces and crutches) and related orthopedic procedures to meet the changing needs of growing children with neuromuscular and musculoskeletal impairments;
- Identify and assess the suitability of materials for use in these devices, including composite materials, considering the weight, strength, durability, adaptability, techniques of fabrication, cost and cosmetic acceptability;
- Develop improved methods for fabricating assistive devices for children, including those using composite materials;
- Evaluate the effectiveness of the systems of delivery of prosthetic and orthotic devices and closely related assistive technology to children with orthopedic impairments and develop recommendations to improve the current systems;
- Identify, develop, and evaluate models to enable children and families, as well as clinicians, to test prosthetic and orthotic devices for suitability prior to purchase;
- Identify the unique barriers to effective service delivery for prosthetic and orthotic devices facing families of children with orthopedic disabilities from minority backgrounds and develop strategies for overcoming those barriers; and
- Develop and implement strategies to increase the participation of children with orthopedic impairments and their parents in identifying user needs for prosthetic and orthotic devices and future areas of research.

**Priority 2: Technology for Low Vision and Blindness****Background**

The National Center for Health Statistics and other authorities variously estimate the number of legally blind persons in the United States at 400,000 to 600,000, with another 1.4 million persons severely visually impaired. More than 10 million others have some visual impairment that cannot be further improved with corrective lenses. There are also large and rapidly increasing numbers of older individuals with impairments in contrast, binocularity, and adaptation, which significantly limit their performance in a wide variety of everyday tasks.

Technological innovations arising from the development of new scientific and medical knowledge can have a positive impact on the lives of persons with low vision or blindness. While progress has been made regarding educational and vocational aids, optical amplifiers for low vision, orientation and mobility aids, and improved functional vision assessment, the need remains for improvements in these areas. For example, there is a need for new and innovative adaptive devices and development of systems engineering solutions to assist in our efforts to prepare all children with low vision and blindness to enter school ready to learn through early identification, monitoring, and treatment of visual impairments in neonates and infants.

A report of the Technology Research Working Group stemming from the NIDRR Project Directors Meeting in January 1994, identified the need for technology to improve access to visual displays, including flat panel displays and devices that use liquid crystal displays with low contrast. Research is also needed to maintain access to new products with advancing technology used in the home, workplace, and the community, such as solid state displays, keypads, and compact disc technology.

Vision-related research is needed to provide access to public facilities and mass transit. One of the main problems for persons who are blind or visually impaired is locating the facility in question (e.g., the bus stop, the subway entrance, ticket vending machine, telephone, bathrooms, etc.), or for orientation and mobility in large open areas or closed crowded spaces. New techniques for orientation and mobility will increase independent mobility for persons with blindness and low vision and decrease dependence on others for information and assistance. There is also a need to research, develop, and evaluate new and adaptive technology for persons with deaf-blindness, including tactile communications for devices such as emergency alarms, doorbells, and TDD phones.

Captioning technology and systems have been developed to provide audio information in visual form for persons who are deaf. A need exists for these same types of technology and systems to provide visual information in audio form for persons who are blind. As technology becomes increasingly graphic in nature, especially with the proliferation of computer-generated imagery, persons who are blind or who have low vision are increasingly at risk of being denied access to

communication formats that are high in graphic content.

The feasibility of descriptive video has been investigated (Technical Viability of Descriptive Video Services, June 1990, prepared for U.S. Department of Education, Office of Special Education Programs). A need exists to advance this technology in order to increase utilization of descriptive video by persons with low vision and blindness.

#### Priority

An RERC on technology for low vision and blindness shall—

- Develop technology and methods for the detection, monitoring, and diagnosis of visual impairments in neonates and infants;
- Develop technology and methods, including map reading, for orientation and mobility in large open areas such as transportation facilities, crossroads, shopping malls, parks, and areas of public assembly and display;
- Develop reduced-cost engineering solutions for increasing utilization of descriptive video;
- Develop technology and methods for improving access to visual displays, including flat panel displays (e.g., develop an adaptive template overlay technology for flat panel displays), found in the home, in the community, and at work such as automatic teller machines, home appliances, stereo equipment, and other devices that use LCD and LED technologies;
- Develop technology for persons with low vision or blindness, including those persons who are elderly as well as persons who have cognitive disabilities, to maintain access to new products with advancing technology used in the home, workplace, and the community, such as solid state displays, keypads, and compact disc technology;
- Develop technology, such as emergency alarms, doorbells, and TDD phones for persons with deaf-blindness and for persons with low vision or blindness who are elderly or have multiple sensory, cognitive or physical impairments, to assist them in their activities of daily living;
- Develop technology and methods for improving access by persons with low vision or blindness to electronic information systems; and
- Develop an engineering design review method for application to proposed new technology projects that first considers commercially available or universal design interfaces before developing orphan technology for individuals with low vision and blindness.

#### Priority 3: Universal Telecommunications Access

##### Background

Generally speaking, individuals with communication disabilities are those with a hearing, vision, speech, or neurological impairment, or a combination of such impairments. This priority proposes a program of research to promote greater access to emerging telecommunications technology by individuals who have communication disabilities, including persons with limited cognitive abilities.

The coming decade is likely to bring advances in the way people communicate over distances. Access to greater bandwidth in the telephone network will lead to new advances, new devices and new services, such as switched video, TV-phones, or voice-to-print (Hinton, OSEP Final Report, "Advanced Technologies for Benefit to Persons with Sensory Disabilities," 1992). Already low-cost facsimile technology, answering machines, and voice mail are changing office communications. Computer-based information services abound, and telephones themselves are no longer standard. Persons with speech impairments are increasingly at a disadvantage with voice recognition and voice mail telecommunication systems because they are designed for standard speech which is clear, well-articulated, and melodic. The employment status, social, and family life of persons with disabilities could be affected by their access to advances in telecommunications.

The Americans with Disabilities Act (ADA) requires private employers, State and local governments, employment agencies, labor unions, and joint labor-management committees to provide reasonable accommodations to qualified individuals with disabilities, including those with communication disabilities. The ADA also requires State and local governments and public accommodations to make auxiliary aids and services available where necessary to ensure effective communication.

Section 508 of the Rehabilitation Act of 1973, as amended, requires the Secretary, through the Director of the National Institute on Disability and Rehabilitation Research, and the Administrator of the General Services Administration, to "develop and establish guidelines for Federal agencies for electronic and information technology accessibility designed to ensure, regardless of the type of medium, that individuals with disabilities can produce information and data, and have access to

information and data, comparable to the information and data, and access, respectively, of individuals who are not individuals with disabilities." Section 508 also provides that the guidelines "shall be revised, as necessary, to reflect technological advances or changes."

Past efforts in opening up developing technology to include access for persons with communication disabilities have been retrospective rather than prospective. Too frequently telecommunications technologies are developed and become widely used before consumers who have communication disabilities become aware of the barriers they inadvertently contain. There is a need to affect the development of telecommunications technology, regulations, and standards in order to promote the incorporation of universal design features. Furthermore, there is a need to communicate information routinely to appropriate researchers, manufacturers, and other major contributors to communication technology that will contribute to the development of accessible telecommunications devices and systems. The need for special customer-premised equipment will be reduced when international standards include features that make general-market products accessible to persons with communications disabilities.

Technological advances in the field of telecommunications, both in this country and internationally, have the potential to represent either new opportunities to disabled people or new barriers. This proposed RERC shall work closely with developers and manufacturers to enhance awareness of how emerging telecommunications developments can be modified to incorporate features that are directly responsive to the special needs of individuals with communication disabilities.

Applicants for this priority must demonstrate knowledge of the history and present roles of various Government agencies in telecommunications and electronic equipment accessibility, such as NIDRR, the Office of Special Education Programs (OSEP), the General Services Administration (GSA), the Federal Communications Commission (FCC), the National Science Foundation (NSF), the National Institute of Standards and Technology (NIST), and the National Telecommunications Information Administration (NTIA). Applicants must also demonstrate a knowledge of other NIDRR-funded programs studying issues of persons with communications impairments as well as related information databases, private national and international

organizations, such as the United States Telephone Association and the Telecommunications Industries Association and the International Telecommunication Union's Technology unit (ITU-T).

#### Priority

An RERC on universal telecommunications access shall—

- Undertake a systems engineering analysis of emerging telecommunications technology (such as signal compression, analog to digital systems transitions, satellite transmission, development of a national information infrastructure, telecommunity living, voice-to-print, Mosaic and Windows multimedia interfaces, etc.) to identify potential technological barriers and marketplace disincentives for persons with communication disabilities, and, based on these analyses, identify and develop universal design strategies, that can be used by both persons with disabilities and able-bodied persons, to avoid these barriers;

- Develop an engineering design review methodology for dissemination to designers that encourages universal access designs in the development of technology;

- Develop or evaluate innovative applications of telecommunication technology to enable individuals with disabilities to be more independent at home, in the community, and at work, including, but not limited to, voice mail, videophones, cellular phones, descriptive video, speech clarification, etc;

- Identify and develop accessible design characteristics for telecommunications technology and services and provide appropriate industries and agencies with the results of this research;

- Develop engineering test methods and labeling requirements to facilitate development of improved technical specifications to enhance accessibility in equipment, services, signaling, transmission, and other aspects of telecommunications, with immediate emphasis on improving relay devices and cooperating with agencies responsible for national and international and other industry group standards;

- Develop model training programs and materials on the use and capacities of new and emerging telecommunications technologies; and

- In the second year of the grant, investigate applications of telecommunications technology to improve access to mainstream educational programming for students

with disabilities, especially students in economically disadvantaged areas.

**Applicable Program Regulations:** 34 CFR Parts 350 and 353.

**Program Authority:** 29 U.S.C. 760-762.

(Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Research Centers).

Dated: November 10, 1994.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

#### Appendix

##### *Analysis of Comments and Changes*

By the deadline date, the Department received 50 comments in response to the proposed priorities. Thirteen additional comments were received after the deadline date and were not considered in this response. Most of the commenters were generally supportive of the proposed priority, but many made suggestions for modifications. This Appendix contains an analysis of the comments and the changes in the priority since the publication of the notice of proposed priority. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

##### *Priority 1: Technology for Children With Orthopedic Disabilities*

**Comment:** One commenter recommended expanding the priority to include spinal orthotics as they relate to seating and upper-limb and cervical orthotics as they relate to body positioning for head and arm control.

**Discussion:** The Secretary believes that the commenter's recommendations are examples of the types of research authorized by the first activity of the priority.

**Changes:** The commenter's examples and other examples of orthotic-related activities have been added to the first activity of the priority.

**Comment:** One commenter recommended expanding the priority to address educational technology.

**Discussion:** The Secretary does not believe it is appropriate to expand the priority because educational technology is addressed through the Technology, Educational Media, and Materials for Individuals with Disabilities Program and Research in Education of Individuals with Disabilities Program administered by the Office of Special Education Programs.

**Changes:** None.

##### *Priority 2: Technology for Low Vision and Blindness*

**Comment:** Many commenters recommended adding specific emphases and activities to the priority.

**Discussion:** The Secretary believes that applicants should have the discretion to propose any emphasis or activity that is authorized by the priority. The application review process will determine the merits of the emphasis or activity that an applicant proposes. The Secretary believes that the commenters' recommendations listed

directly below are authorized by the priority and may be proposed by an applicant. However, the Secretary declines to require all applicants to address them. These recommended emphases and activities are as follows: Develop tools and technologies that promote employment and independent living; address artificial vision, image recognition, and vocalization; emphasize technologies for low vision; emphasize approaches that are compatible with each other and/or which provide an integrated solution to the full range of orientation problems; address wayfinding systems that rely heavily on the provision of labels; and emphasize natural speech to access products with advancing technology and for accessing electronic information systems.

In addition, the Secretary believes that the following recommended activities are authorized by the priority, but may not be feasible because of the limited resources available to the RERC: Expand the activity on developing reduced cost engineering solutions for descriptive videos to all assistive technology and services used by persons with low vision or blindness; develop better electro-optical devices and visual field wideners for persons with retinitis pigmentosa and better visual aids for persons with macular degeneration; improve Microsoft Windows environment to work better with screen reader technology; address interoperability of visual displays and graphic user interfaces being developed for applications in such areas as home appliances, information kiosks, and video access systems for public telephones; develop access to graphical user interface operating systems;

The Secretary believes that the following commenters' recommendations are not authorized by the priority because the activity is incompatible with purpose of the RERC: Conduct a technology needs assessment of the entire blind and visually impaired populations; address educational technology; address methods and technologies to facilitate detection and characterization of remedial visual disabilities; assess the strengths and weaknesses of current technology; develop methods and technologies to train individuals in the optimal use of residual vision, enhancement techniques, and vision substitution techniques; and provide spatial orientation training.

**Changes:** None.

**Comment:** One commenter recommended revising the priority to address the needs of persons with cognitive disabilities.

**Discussion:** The Secretary agrees the RERC should address the needs of persons with low vision or blindness who also have cognitive disabilities.

**Changes:** The fifth activity of the priority has been revised to require the RERC to address the needs of persons with cognitive disabilities when it develops technology to maintain access to new products with advancing technology used in the home, workplace, and the community.

**Comment:** Many commenters recommended revising the priority to address the unique needs of persons who are elderly.

**Discussion:** The Secretary agrees that the RERC should address the unique needs of

persons who are elderly with low vision or blindness. The Secretary believes that the RERC should address these needs in carrying out the fifth and sixth activities of the priority.

**Changes:** The fifth and sixth activities of the priority have been revised to emphasize persons who are elderly.

**Comment:** Many commenters recommended that the RERC address issues related to transportation. Three commenters recommended revising the priority to deal with improving orientation and mobility aids in surface transportation vehicles and facilities. Five commenters recommended that transit issues be addressed in the second activity of the priority involving orientation and mobility in "large open areas." One commenter recommended adding an activity to address issues surrounding audible traffic signals and an activity to provide directional information at crossroads.

**Discussion:** The Secretary agrees that transportation issues of orientation and mobility for persons with low vision or blindness are important. The Secretary believes that clarification is necessary to ensure that applicants have the discretion to address transportation issues under the second activity of the priority.

**Changes:** The second activity of the priority has been revised to clarify that transportation facilities and crossroads may be considered "large open areas" for the purposes of the second activity of the priority.

**Comment:** Five commenters asked for clarification regarding the meaning of phrase "large open areas" in the second activity.

**Discussion:** The Secretary agrees that clarification of the phrase "large open areas" will assist applicants to address the second activity of the priority.

**Changes:** Examples of large open areas have been added to the second activity of the priority.

**Comment:** Four commenters recommended placing less emphasis on descriptive videos because of OSEP's descriptive video activities.

**Discussion:** The descriptive videos activities of OSEP do not involve the development of reduced-cost engineering solutions to increase utilization. The Secretary believes that the RERC's activities related to descriptive videos will complement, not duplicate, the activities that OSEP is undertaking.

**Changes:** None.

**Comment:** Three commenters recommended that the RERC address the needs of rural, economically disadvantaged, and minority populations.

**Discussion:** The Secretary expects RERCs to address the needs of rural, economically disadvantaged, and minority populations. The statute requires all applicants for a grant to demonstrate how its proposed activities will address the needs of individuals from minority backgrounds. It also requires all RERCs to demonstrate and disseminate innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas. The Secretary does not believe any further requirements are necessary.

**Changes:** None.

**Comment:** Four commenters recommended expanding the priority to address visual impairment and hearing loss beyond the provisions regarding persons with deaf-blindness in the sixth activity of the priority. Another commenter recommended that the sixth activity be expanded to include persons with multiple sensory, cognitive, and physical impairments.

**Discussion:** The Secretary agrees that it would be appropriate and feasible to expand the sixth activity to address the needs of persons with low vision or blindness and a hearing loss, as well as persons with multiple sensory, cognitive, and physical impairments.

**Changes:** The sixth activity of the priority has been revised to include persons with low vision or blindness and a hearing loss, as well as persons with multiple sensory, cognitive, and physical impairments.

**Comment:** One commenter questioned the National Center for Health Statistics' estimate of the number of legally blind persons and severely visually impaired persons in the United States cited in the Background to the priority.

**Discussion:** The Secretary believes these data are accurate.

**Changes:** None.

**Comment:** One commenter noted that the technology developed by the RERC may also address the needs for cuing and multiple input needed by persons with other disabilities than low vision or blindness.

**Discussion:** The Secretary agrees that the technology developed by the RERC may also address the needs of persons with other disabilities. The Secretary believes that the eighth activity of the priority regarding commercially available or universal design interfaces will promote the applicability of the RERC's work to persons with disabilities other than low vision or blindness.

**Changes:** None.

**Comment:** Four commenters recommended requiring that the RERC coordinate its research activities with specific public and private entities conducting research in the same field.

**Discussion:** The Secretary believes that every RERC should coordinate its research activities with public and private entities conducting research in the same field in order to avoid duplication and enhance the quality of its research activities. The Secretary declines to identify each of these public and private entities in the priority. However, the Secretary believes that each applicant for an RERC should describe the coordination activities it will undertake with public and private entities conducting similar research activities.

**Changes:** A general requirement has been added, applicable to all RERCs, requiring each applicant to describe the coordination activities it will undertake with public and private entities conducting similar research activities in order to avoid duplication and enhance the quality of its research activities.

### **Priority 3: Universal Telecommunications Access**

**Comment:** One comment recommended expanding the priority to include specific

adaptions and research (e.g., memory assists, signing simplification, and the adaption of software) for persons with limited cognitive ability.

**Discussion:** The Secretary agrees the RERC should address the needs of persons with limited cognitive abilities who experience communication disabilities. The Secretary believes that applicants should have the discretion to propose specific research activities.

**Changes:** The Background to the priority has been revised to include persons with limited cognitive abilities as part of the target population of the RERC.

**Comment:** One commenter asked whether, for the purposes of the priority, the phrase "universal design" meant "to have similar design standards and strategies and to require the same mode of input and capability," or "to design for all people regardless of disability or capability."

The same commenter also asked for clarification regarding the terms, "signaling, transmission, and relay devices" in fifth activity of the priority.

**Discussion:** The Secretary notes that in its absolute priority establishing the RERC on Accessibility and Universal Design in Housing (see 58 FR 60097), NIDRR referred to "universal design" technology as enhancing the lives of all people and being usable both by individuals with disabilities and able-bodied persons. The Secretary believes that the comment's latter definition of universal design approximates NIDRR's meaning.

Regarding the commenter's request regarding the fifth activity of the priority, the Secretary points out that the fifth activity is intended to enhance the current telephone relay system used by persons who are deaf.

**Changes:** The first activity of the priority has been revised to clarify that the RERC will identify and develop universal design strategies that can be used by both persons with disabilities and able-bodied persons.

**Comment:** One commenter recommended that the priority include a broad perspective on what constitutes a communication disability, focus on employment as goal of the priority, and emphasize diverse environments, especially worksites.

**Discussion:** The Secretary believes that the commenter's recommendations are authorized by the priority and may be proposed by an applicant. The Secretary believes that applicants should have the discretion to propose any emphasis or activity that is authorized by the priority. The application review process will determine the merits of each proposal. However, the Secretary declines to require all applicants to address the commenter's recommendations.

**Changes:** None.

**Comment:** One commenter recommended expanding the priority to add the development of an engineering review method for ensuring accessibility and interoperability of communications networks. Another commenter recommended that the RERC assess the interoperability of cable and broadcast television, telephone, radiowave, and network services.

**Discussion:** The Secretary believes that the commenters' recommendations are

authorized by the priority, but may not be feasible because of the limited resources available to the RERC.

*Changes:* None.

#### General Comments

*Comment:* Nine commenters recommended providing authority to the RERC to undertake laboratory development of customized devices.

*Discussion:* The Secretary recognizes that one of the incidental benefits of RERC research has been the laboratory development of customized devices. The Secretary believes that it is important to clarify that this authority continues to exist. The Secretary also notes that while the RERC on Universal Telecommunications Access is not required to have a laboratory and the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to the marketplace, applicants may propose such activities.

*Changes:* The general requirements of the priorities have been revised to clarify that the RERC on Children with Orthopedic Impairments and the RERC on Low Vision and Blindness must have a laboratory to undertake development of devices.

*Comment:* One commenter recommended requiring that all of the RERCs undertake and complete a systems engineering analysis of the factors understood to be the priority.

*Discussion:* The Secretary believes that the commenter's recommendation is authorized by each of the priorities and may be proposed

by an applicant. The Secretary believes that applicants should have the discretion to propose any emphasis or activity that is authorized by the priority. The application review process will determine the merits of each proposal. However, the Secretary declines to require all applicants to address the commenter's recommendations.

*Changes:* None.

*Comment:* One commenter recommended a new priority for the demonstration of rehabilitation technology activities related to early childhood, including early intervention and family support.

*Discussion:* The Secretary will consider the commenter's recommendation when new priorities are being developed.

*Changes:* None.

[FR Doc. 94-28479 Filed 11-17-94; 8:45 am]

BILLING CODE 4000-01-P

[CFDA No.: 84.133E]

#### Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Award Under the Rehabilitation Engineering Research Centers (RERC) for Fiscal Year (FY) 1995

**NOTE TO APPLICANTS:** This notice is a complete application package. The

notice contains information, application forms, and instructions needed to apply for a grant under this competition. The final priorities for the RERCs are published in this issue of the **Federal Register**. This consolidated application package includes the closing date, estimated funding, and application forms necessary to apply for an award under this program's competition. Potential applicants should consult the statement of the final priorities published in this issue to ascertain the substantive requirements for their applications.

The estimated funding level in this notice does not bind the Department of Education to make awards or to any specific number of awards or funding levels.

**Note:** The Rehabilitation Act Amendments of 1992 require that each applicant for a project under this competition must demonstrate in its application how it will address the needs of individuals from minority backgrounds who have disabilities.

**APPLICATION AVAILABLE:**  
November 18, 1995.

#### APPLICATION NOTICE FOR FISCAL YEAR 1995 REHABILITATION ENGINEERING RESEARCH CENTER PROGRAM, PCFDA No. 84.133E

Funding priority	Deadline for transmittal applications	Estimated number of awards	Estimated size of awards (per year)	Project period (months)
Technology for Children with Orthopedic Disabilities .....	1/20/95	1	\$500,000	60
Technology for Low Vision and Blindness .....	1/20/95	1	600,000	60
Universal Telecommunications Access .....	1/20/95	1	500,000	48

Before your application can be reviewed, it must include this description. Applications for which this information is not received will not be reviewed.

Successful applicants that provide services to individuals with disabilities will be required to advise these individuals, or as appropriate, the parents, family guardians, advocates, or authorized representatives of these individuals, of the availability and purposes of the State Client Assistance Program (CAP), including information on means of seeking assistance under such programs. A list of State CAPs will be provided to successful applicants when they are notified of their award.

This notice supports the National Education Goals that call for all children in America to start school ready to learn and for every adult American to possess

the skills necessary to compete in a global economy.

If you need further information about these requirements, please contact David Esquith at (202) 205-8801.

Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-5516.

**APPLICABLE REGULATIONS:** (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR Parts 350 and 353; and (c) the notice of final priorities as published elsewhere in this issue of the **Federal Register**.

**PURPOSE OF PROGRAM:** Rehabilitation Engineering Research Centers develop and disseminate innovative methods of applying advanced technology, scientific

achievement, and psychological and social knowledge to solve rehabilitation problems and remove environmental barriers; study new or emerging technologies, products, or environments; demonstrate and disseminate innovative models for the delivery of cost-effective rehabilitation technology services; and conduct other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities. RERCs facilitate service delivery systems change through the development of consumer-responsive models for the delivery of rehabilitation technology services.

**SELECTION CRITERIA:** The Secretary uses the following selection criteria to evaluate applications under this program.

(a) *Relevance and importance of the research program* (25 points). The

Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area and to the development of new technology or new applications of existing technology, and is likely to become a nationally recognized source of information on technology in the priority area; and

(3) The applicant demonstrates that all component activities of the Center are related to the overall objectives of the Center, and will build upon and complement each other to enhance the likelihood of finding solutions to significant rehabilitation problems.

(b) *Quality of the research design* (25 points). The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive program of research for the total project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with the state-of-the-art and current research in rehabilitation technology;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(vi) The applicant assures that human subjects, animals, and the environment are adequately protected;

(3) The plan for development, clinical testing, and evaluation of new devices and technology is likely to yield significant products; and

(4) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses; and could be used for planning additional research, including the generation of new hypotheses where applicable.

(c) *Quality of the dissemination and utilization Program* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for dissemination provides evidence that

research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed activities are relevant to regional and national needs of the rehabilitation field; and dissemination packages will be prepared in a form usable by individuals with all types of disabilities;

(2) The proposed plan for dissemination and utilization of the research and development provides for—

(i) Orientation programs for rehabilitation service personnel to improve the application of rehabilitation technology;

(ii) Programs which specifically demonstrate means for utilizing rehabilitation technology;

(iii) Technical assistance and consultation that are responsive to concerns of service providers and consumers; and

(iv) Dissemination of research finding through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications, in an effort to make research results accessible to manufacturers, rehabilitation service providers, researchers, educators, disabled individuals and their families, and others; and

(3) There is an appropriate plan to ensure the distribution and utilization of new devices and technology.

(d) *Quality of the organization and management* (25 points). The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the principal investigator and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of time for all staff is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition;

(2) The budgets for the Center and each of the proposed activities are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions; and

(8) The plan for evaluation of the Center will assess annually the outcomes of the discrete and interrelated research projects, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

**ELIGIBLE APPLICANTS:** Public or private entities, including Indian tribes and tribal organizations, are eligible to receive awards under this program provided they ensure that the Center is operated in collaboration with an organization of higher education or a nonprofit organization.

**Program Authority:** 29 U.S.C. 762.

#### INSTRUCTIONS FOR TRANSMITTAL OF APPLICATIONS

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, D.C. 20202-4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, D.C. time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

- (1) A private metered postmark.
- (2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

#### Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524) and instructions.

Part III: Application Narrative.

#### Additional Materials

Estimated Public Reporting Burden. Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED Form 80-0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form ED 80-0014) and instructions. (Note: ED Form ED-80-0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL-A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

#### FOR FURTHER INFORMATION CONTACT:

Dianne Villines, U.S. Department of Education, 600 Independence Avenue, S.W., Switzer Building, Room 3417, Washington, D.C. 20202-2704. Telephone: (202) 205-9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8887.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260-9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

**Program Authority:** 29 U.S.C. 760-762.

**Dated:** November 10, 1994.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

#### Appendix

##### Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section.

##### Frequent Questions

###### 1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

###### 2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

###### 3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

###### 4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

###### 5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

Applicants in the FIR, AND Innovation grants programs should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

###### 6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

###### 7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs.

###### 8. Can NIDRR Staff Advise Me Whether My Project is of Interest to NIDRR or Likely to Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

###### 9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including the title of the priority to which they are responding.

###### 10. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time.

frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

**11. Can I Call NIDRR to Find Out If My Application is Being Funded?**

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot

be released except through this formal notification.

**12. If My Application is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?**

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

**13. Will All Approved Applications Be Funded?**

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-P

OMB Approval No. 0348-0043

**APPLICATION FOR  
FEDERAL ASSISTANCE**

<b>1. TYPE OF SUBMISSION:</b> <i>Application</i> <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction  <i>Preapplication</i> <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		<b>2. DATE SUBMITTED</b>  	Applicant Identifier  
<b>3. DATE RECEIVED BY STATE</b>  		State Application Identifier  	
<b>4. DATE RECEIVED BY FEDERAL AGENCY</b>  		Federal Identifier  	
<b>5. APPLICANT INFORMATION</b>			
Legal Name:		Organizational Unit:	
Address (give city, county, state, and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code)	
<b>6. EMPLOYER IDENTIFICATION NUMBER (EIN):</b> <div style="border: 1px solid black; width: 150px; height: 20px; margin: 5px 0;"></div>		<b>7. TYPE OF APPLICANT: (enter appropriate letter in box)</b> <input type="checkbox"/> A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____	
<b>8. TYPE OF APPLICATION:</b> <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award    B. Decrease Award    C. Increase Duration D. Decrease Duration    Other (specify): _____		<b>9. NAME OF FEDERAL AGENCY:</b>  	
<b>10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:</b>		<b>11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:</b>  	
<b>12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):</b>  			
<b>13. PROPOSED PROJECT:</b> Start Date    Ending Date		<b>14. CONGRESSIONAL DISTRICTS OF:</b> a. Applicant b. Project	
<b>15. ESTIMATED FUNDING:</b>		<b>16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?</b>	
a. Federal	\$	.00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: _____ DATE _____ b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
b. Applicant	\$	.00	
c. State	\$	.00	
d. Local	\$	.00	
e. Other	\$	.00	
f. Program Income	\$	.00	<b>17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?</b> <input type="checkbox"/> Yes    If "Yes," attach an explanation. <input type="checkbox"/> No
g. TOTAL	\$	.00	
<b>18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED</b>			
a. Typed Name of Authorized Representative		b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed	

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)  
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry:   | Item: | Entry:   |
|-------|--|-------|--|
| 1.    | Self-explanatory.  | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable).  | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 15.   | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5.    | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.   | 16.   | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 17.   | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| 7.    | Enter the appropriate letter in the space provided.  | 18.   | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>— "New" means a new assistance award.<br>— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |       |  |
| 9.    | Name of Federal agency from which assistance is being requested with this application.   |       |  |
| 10.   | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.  |       |  |
| 11.   | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.  |       |  |

## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary**  
**Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.) (continued)**

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.) (continued)**

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5 —** Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i —** Show the totals of Lines 6a to 6h in each column.

**Line 6j —** Show the amount of indirect cost.

**Line 6k —** Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

**INSTRUCTIONS FOR THE SF-424A (continued)**

**Line 7** - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal Resources**

**Lines 8-11** - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** - Enter the contribution to be made by the applicant.

**Column (c)** - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** - Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** - Enter totals of Columns (b), (c), and (d).

**Line 12** - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** - Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** - Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** - Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** - Provide any other explanations or comments deemed necessary.

## U.S. DEPARTMENT OF EDUCATION

## BUDGET INFORMATION

## NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/95

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY  
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization		Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.				
<b>SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS</b>						
Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						
<b>SECTION C - OTHER BUDGET INFORMATION (see instructions)</b>						

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

## INSTRUCTIONS FOR ED FORM NO. 524

### General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

### Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e):

For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f):

Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e):

Show the total budget request for each project year for which funding is requested.

Line 12, column (f):

Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Instructions for ED Form 524 (cont.)

Section B - Budget Summary  
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e):

For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f):

Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e):

Show the total matching or other contribution for each project year.

Line 12, column (f):

Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information

Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education,

Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

BILLING CODE 4000-01-P

**ASSURANCES — NON-CONSTRUCTION PROGRAMS**

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION	DATE SUBMITTED	

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

### Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

### Certification

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

## CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- (c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 -

#### A. The applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, CSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

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Check ☐ if there are workplaces on file that are not identified here.

## DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, CSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

**DISCLOSURE OF LOBBYING ACTIVITIES**Approved by OMB  
0348-0046Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known: _____	<b>5. If Reporting Entity in No. 4 is Subawardee. Enter Name and Address of Prime:</b>  Congressional District, if known: _____	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number, if known:</b>	<b>9. Award Amount, if known:</b> \$ _____	
<b>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</b>  <div style="border: 1px solid black; height: 100px; width: 100%;"></div>		
<b>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</b>  <div style="border: 1px solid black; height: 100px; width: 100%;"></div>		
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
<b>11. Amount of Payment (check all that apply):</b> \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	<b>13. Type of Payment (check all that apply):</b> <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
<b>12. Form of Payment (check all that apply):</b> <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
<b>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</b>  <div style="border: 1px solid black; height: 150px; width: 100%;"></div>		
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
<b>15. Continuation Sheet(s) SF-LLL-A attached:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		
<b>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</b>	<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____	
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**INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

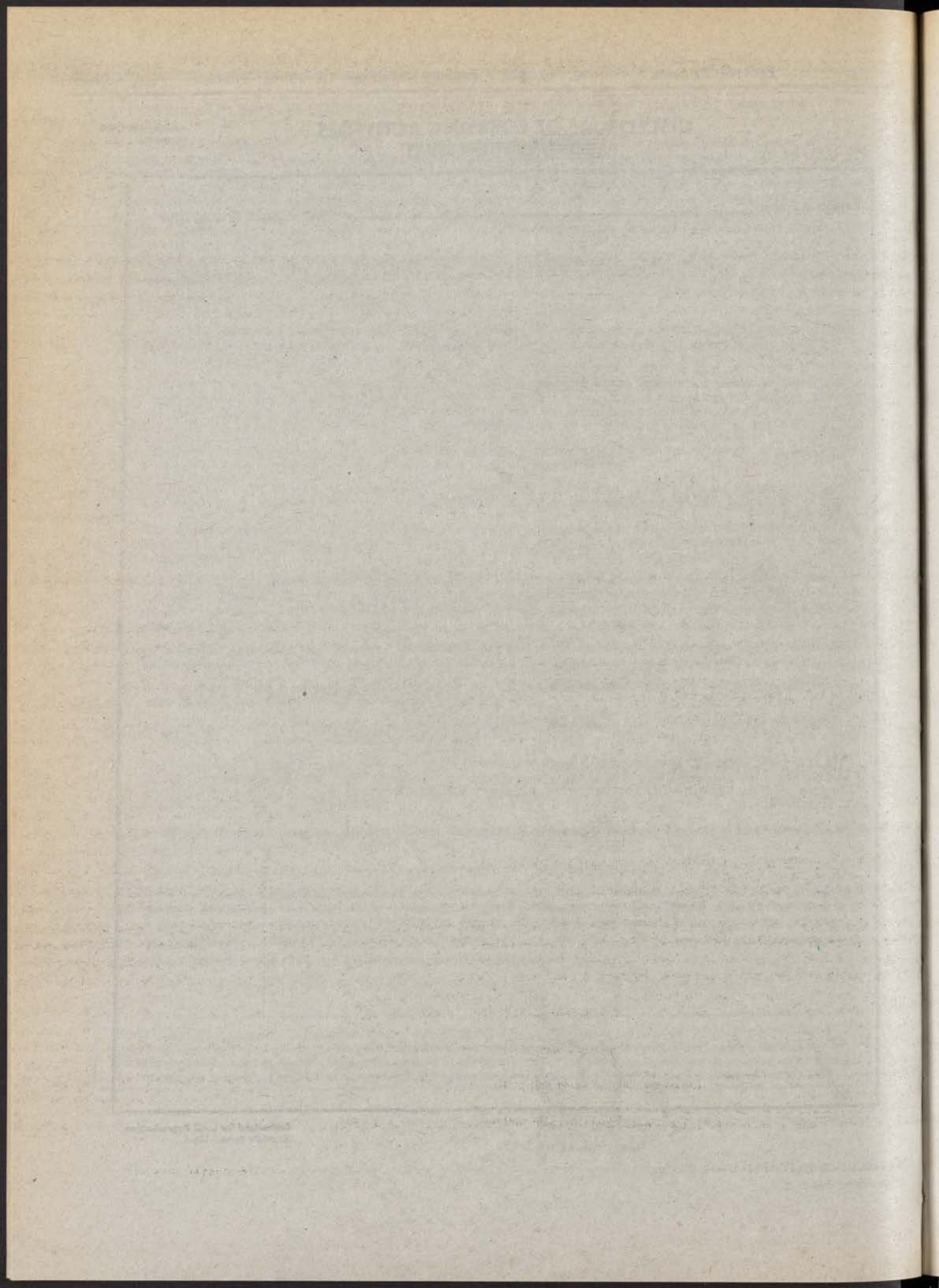
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**DISCLOSURE OF LOBBYING ACTIVITIES  
CONTINUATION SHEET**

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0346-0046

Reporting Entity: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_

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# Executive Order

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Friday  
November 18, 1994

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## Part IV

### The President

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Proclamation 6757—National Farm-City  
Week



# Presidential Documents

Title 3—

Proclamation 6757 of November 16, 1994

The President

National Farm-City Week, 1994

By the President of the United States of America

## A Proclamation

Agricultural industries, from farming itself to the retail selling of farm products, constitute the largest sector of the American economy and account for 16 percent of the U.S. gross domestic product. Our Nation's food and fiber industry has had an immeasurable impact on America's culture, lifestyle, and tradition. As we enjoy the benefits of another rich harvest, it is important that we pay tribute to production agriculture as a central aspect of American life. That is why, since 1956, National Farm-City Week has been celebrated in the busy time just before and including Thanksgiving Day.

Americans are blessed with an abundance of wholesome and economical food and fiber, but we often do not fully appreciate the complexity of food production. Today, our Nation's farm-to-market system uses technically advanced tools that enable our farmers to feed and clothe 260 million Americans and millions more overseas each year.

From Alaska to New York, from Hawaii to the southern tip of Florida, American farms yield a remarkable variety of crops. These products bring economic stability to farm families and rural communities, who in turn work to implement the latest conservation measures to safeguard and improve the environment for the generations to come.

America's farmers are helped by countless other professionals who advertise, develop, forecast, inspect, market, purchase, regulate, report, research, and transport value-added food and fiber throughout the country and around the world. This farm-city connection and these millions of individuals provide 1 in every 6 jobs in the United States, assisting and enhancing the efforts of our 2 million farmers every day.

It is fitting that we reflect on the importance and strength of agriculture in our society. The interdependency between the farm and city forms a solid, vital link connecting agricultural producers and professionals of all kinds. It allows the United States to maintain its leadership role as a source for both raw and value-added goods around the world.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 18 through November 24, 1994, as "National Farm-City Week."

I encourage all Americans, on our farms and in our cities alike, to recognize the accomplishments of our farmers and of all those who work together to produce the abundance of agricultural foods and fibers that strengthen and enrich the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of November, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

*William Clinton*

[FR Doc. 94-28771

Filed 11-17-94; 11:22 am]

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Federal Register

Vol. 59, No. 222

Friday, November 18, 1994

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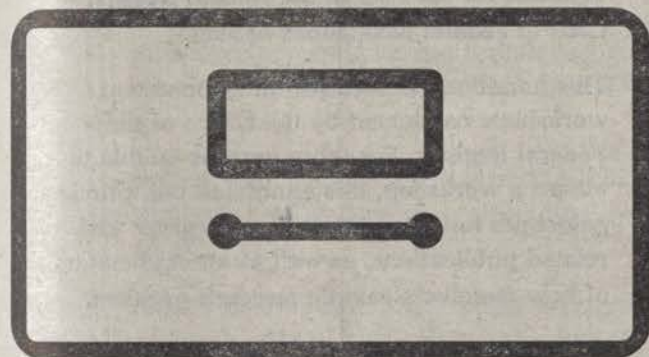
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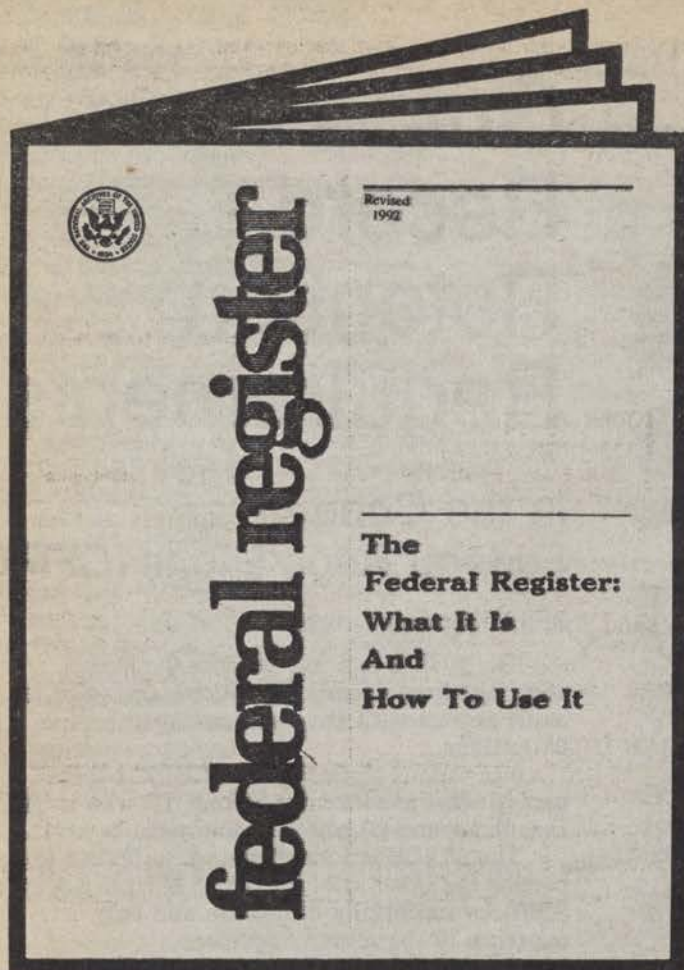
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